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and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ELENA PUNTY, on behalf of herself and
all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

HOSKINS & MUIR, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: RG20064854

Assigned to the Hon. James Reilly, Dept. 25

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

Date: August 18, 2021
Time: 9:00 a.m.
Dept.: 25

Reservation # R-2265687

Complaint Filed: June 15, 2020

I, DANIEL F. GAINES, hereby declare and state as follows:

1. I am an attorney duly admitted to the practice of law in the State of California. I am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Elena Punty ("Punty" or "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts set forth herein and if called as a witness to testify to them, I could and would do so competently.

Education and Experience:

2. I obtained my BS degree from the University California at Berkeley in 2003. I majored in Business Administration at the Haas School of Business.

3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

4. Since becoming a member of the Bar, I have practiced law with my partner/father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex employment litigation similar to the instant action.

5. My firm has represented employees in complex employment matters such as this one, with an emphasis in wage and hour issues. I have participated in and have been certified as class counsel in dozens of class action matters since my admission to the Bar. A list of the cases in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

Factual and Procedural Background:

6. On March 25, 2020, Plaintiff Punty exhausted the pre-filing requirements of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

7. On June 15, 2020, Plaintiff Punty initiated this Action in the Alameda County Superior Court by filing a complaint, pursuant to PAGA, on behalf of herself and all other aggrieved employees.

8. As set forth in the proposed First Amended Complaint attached as **Exhibit 3** to the Settlement Agreement, which the Parties seek to file as part of this motion for preliminary approval of the Settlement Agreement, the Action asserts class and representative claims against Defendant for (1) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001); (2) failure to provide rest periods or compensation in lieu thereof (Labor Code §§ 226.7, 558 and IWC Wage Order 4-2001); (3) knowing and intentional failure to comply with itemized employee wage statement provisions,

1 including failure to maintain accurate records (Labor Code §§ 226(a) and 226.3); (4) failure to
2 timely pay wages at the separation of employment (Labor Code §§ 201-203); (5) violation of
3 Business and Professions Code § 17200 for underlying violations of the Labor Code as set forth
4 above; and (6) civil penalties pursuant to PAGA for underlying violations of the Labor Code as
5 set forth above.

6 9. Defendant denies any liability or wrongdoing of any kind associated with the
7 claims alleged in the Action, and further denies that the Action is appropriate for class treatment
8 for any purpose other than this settlement. Defendant contends that it has complied at all times
9 with the California Labor Code. It is Defendant's position that, if this case were to be litigated,
10 class certification would be inappropriate because Plaintiff is not an adequate class
11 representative, Plaintiff's claims are not typical of putative class members, and individual issues
12 predominate over class issues, among other defenses. The Action, the negotiation and execution
13 of the Settlement Agreement, and all acts performed or documents executed pursuant to or in
14 furtherance of the Settlement Agreement (i) shall not be used as an admission, or as evidence of
15 wrongdoing by the Defendant, or for any other purpose whatsoever; (ii) shall not be an
16 admission or evidence of fault on behalf of Defendant in any action before a civil court, criminal
17 court, administrative agency of any type, or other tribunal; and (iii) shall not be deemed to be,
18 and may not be used as, an admission or evidence of the appropriateness of these or similar
19 claims for class certification in the Actions or with respect to any other proceeding whatsoever.

20 10. The Class Representative contends that Defendant violated the California Labor
21 Code and that this case is appropriate for class certification.

22 **Investigation And Settlement Discussions**

23 11. My colleagues and I have conducted a thorough investigation into the facts and
24 law at issue in this case, including the exchange of extensive informal discovery and the review
25 and verification of statistical data and other facts and information provided by Defendant.

26 12. On March 25, 2021, the Parties participated in a full day mediation session with
27 Lisa Klerman, Esq., a well-respected mediator with extensive experience resolving employment
28 wage and hour actions. The mediation did not culminate with any agreement to resolve the

1 Action, but following further extended negotiations with the assistance of Ms. Klerman, the
2 basic terms of the Settlement Agreement were reached.

3 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**

4 **Litigation:**

5 13. Based on our independent investigation and evaluation, my colleagues and I are of
6 the opinion that settlement for the consideration and on the terms set forth in the Settlement
7 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
8 light of all known facts and circumstances, including the risk of significant delay, the risk the
9 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

10 14. The Parties agree that the Settlement Class may be certified for settlement
11 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
12 Class is for purposes of settlement only. If for any reason the settlement is not approved, the
13 certification shall have no force or effect and the settlement and will immediately be revoked.
14 The Parties further agree that certification for purposes of approving the Settlement Agreement
15 is in no way an admission that class certification is proper under the more stringent standard
16 applied for litigation and that evidence of this limited stipulation for settlement purposes only
17 will not be admissible for any purpose in this or any other proceeding.

18 15. The Parties thereafter jointly prepared the Settlement Agreement ("Settlement
19 Agreement" or "Stipulation of Settlement" or "Stip."), a true and correct copy of which is
20 attached hereto as **Exhibit B**. All of the terms of the Parties' settlement are contained within the
21 Settlement Agreement. At all times, the Parties' settlement negotiations have been non-
22 collusive, adversarial, and at arm's length.

23 16. My office created a comprehensive damage analysis using sampling information
24 obtained through informal discovery. This damage analysis reveals that the negotiated
25 settlement falls within a realistic range of recovery on class members' claims.

26 17. In the Action, Plaintiff contends that Defendant failed to permit or authorize her
27 and Class Members to take timely 30-minute meal periods for shifts greater than 5 hours in
28 length, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001. Labor

1 Code § 512 provides that employers (like Defendant) may not employ an employee for a work
2 period of more than five hours without providing a 30-minute meal period starting no later than
3 the end of the fifth hour. Plaintiff and Class Members contend they were routinely unable to take
4 a proper meal break when they worked shifts in excess of five hours in duration and a second
5 meal break when they worked shifts in excess of ten hours in duration. When they were able to
6 take a meal period, they were oftentimes, late, cut short, or on-duty. Based on an expert analysis
7 of employee time data, the first meal period violation rate is 24.5% and the second meal period
8 violation rate is 20.8%. The maximum value of this claim is \$203,792, but required a discount
9 for settlement purposes in light of the defenses asserted by Defendant, including that Plaintiff
10 would be unable to certify a class, would be unable to prove that employees did not waive their
11 meal periods, and would be unable to prove that meal periods were not properly taken.
12 Litigation risks, including the class certification risk, justify the compromised settlement
13 amount.

14 18. Plaintiff further alleges that Defendant failed to provide her and Class Members
15 with legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as
16 required by Labor Code § 226.7 and Wage Order 4-2001. Plaintiff argues that Defendant
17 maintained an illegal policy and practice requiring her and Class Members to remain on
18 Defendant's premises during their rest periods, resulting in impermissible on-duty rest periods
19 subject to employer control. Plaintiff contends that this policy and practice violates the holding
20 in *Augustus v. ABM Security Services, Inc.* Based on an estimated 25% violation rate, the
21 maximum value of this claims exceeds \$204,000. It, too, however, required a discount for
22 settlement purposes. The risks of class certification and Defendant's multiple litigation defenses
23 on the merits – including that its policy and practice of requiring employees stay on the company
24 premises during their breaks is both permitted by controlling law and was not actually a policy
25 and practice at all – required and justify the compromised settlement amount.

26 19. Class Members also sought wage statement penalties pursuant to Labor Code §
27 226(e) (valued at up to approximately \$196,700) waiting time penalties pursuant to Labor Code
28 § 203 (valued at up to approximately \$511,500 for former employees) and PAGA penalties

1 derivative of the underlying violations alleged (valued at up to approximately \$231,500, without
2 stacking multiple violations). The value of these penalties – which are derivative, discretionary,
3 and subject to defenses of their own – is substantial, but their recovery carried substantial risk.
4 Plaintiff believed it was unlikely that many of these penalties could be recovered because their
5 value would eclipse the value of alleged underpaid premium wages (if such wages were
6 recovered at all), because Plaintiff's claims are novel, and because of Defendant's potential
7 independent defenses to these penalties. The settlement here is a fair compromise of these
8 penalty claims.

9 20. A discount on the maximum value of Class members' claims was required (and
10 warranted) to resolve the matter at this junction. Class certification is a substantial risk in any
11 class action case. Here, while Plaintiff maintains that the requirements of class certification are
12 met, Defendant proffers various arguments why class treatment is not appropriate here, including
13 but not limited to that individualized inquires among class members predominate over common
14 ones, and high documented compliance rates indicating lack of a common unlawful practice. If
15 Defendant was to defeat Plaintiff's class certification motion, there would be no class wide relief
16 whatsoever, and most Class Members would likely not file individual claims.

17 21. Plaintiff also faced the risk of a loss on the merits on her claims. It is very possible
18 that the Court would agree with Defendant's position that its meal and rest period policies and
19 practices complied with the requirements of California law. In such a case, the value of the
20 majority of Plaintiff's claims would be zero.

21 22. Finally, Plaintiff faced the risk that she would not obtain a maximum
22 damage/penalty award on all (or any of) her claims. For example, Plaintiff seeks discretionary
23 penalties pursuant to the Private Attorneys General Act. Even if Plaintiff did prevail on these
24 claims, it is possible that the Court would not impose all penalties pursuant to its discretionary
25 power to reduce them.

26 23. Defendant strongly contends that its policies and practices do not violate any laws.
27 It contends that its wage and hour policies properly provided for all meal and rest periods and
28

1 fully compensated employees for all time worked. It further contends that the wage statements it
2 provides to its employees are fully compliant with California law.

3 24. When the costs and risks of non-certification and loss on the merits are considered,
4 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

5 25. The settlement for each participating Class Member is fair, reasonable and
6 adequate, given the inherent risk of litigation, the risk relative to class certification and the costs
7 of pursuing such litigation. The settlement shall finally resolve all claims of the Class Members
8 as alleged in the Action.

9 **Class Certification Requirements:**

10 26. To date, no class has been certified. The Stipulation of Settlement contains a
11 provision pursuant to which we stipulate to the Court's provisional certification of the
12 approximately 133-member Settlement Class, but do so for purposes of this settlement only.

13 27. Plaintiff contends that class certification is appropriate here. In this case, the Class
14 Members are identifiable from Defendant's employment and payroll records. Further, the
15 Settlement Class is sufficiently numerous to warrant certification. According to Defendant's
16 records, the Class comprises approximately 133 employees.

17 28. The Class Members' claims all stem from a common source: members of the
18 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
19 with their employment. All members of the Class seek the same relief under the same California
20 laws (related to unpaid meal and rest period premiums, inaccurate or incomplete wage
21 statements, failure to timely pay wages due upon separation, and derivative claims including
22 without limitation claims of unfair business practices and for penalties). Under these
23 circumstances, the commonality requirement is satisfied for purposes of certifying the
24 Settlement Class for settlement purposes.

25 29. In this case, named Plaintiff and proposed Class Representative Elena Punty is a
26 former non-exempt employee who worked for Defendant in the State of California during the
27 Class Period. She contends that Defendant failed to provide meal and rest periods, failed to
28 comply with itemized employee wage statement provisions, and failed to timely pay wages at the

1 separation of employment, in violation of Labor Code §§ 201-203, 226(a), 226.7, 512, 2698, and
2 2699, among other Labor Code provisions. She has the same claims as those that the members
3 of the Settlement Class would reasonably be expected to bring based on the course of conduct
4 alleged herein.

5 30. Plaintiff Elena Punty has also demonstrated that she will aggressively and
6 competently assert the interests of the proposed Settlement Class; she has taken an active role in
7 this litigation and has no apparent conflicts with other class members.

8 **Filing of the First Amended Complaint:**

9 31. To effectuate the settlement, the Parties have agreed that Plaintiff will file a First
10 Amended Complaint, which alleges all claims to be released through the Settlement. A true and
11 correct copy of the proposed First Amended Complaint is attached to the Settlement Agreement
12 as **Exhibit 3**. If the Court approves the Settlement and permits the filing of the First Amended
13 Complaint, the Parties request that Defendant's Answer to the Complaint be deemed its Answer
14 to the First Amended Complaint.

15 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

16 32. My office submitted the Motion for Preliminary Approval and supporting
17 documentation to the LWDA via electronic submission in compliance with Labor Code §
18 2699(1)(2) on June 22, 2021, the same date that the documents were submitted for filing with the
19 Court.

20 I declare, under penalty of perjury, under the laws of the State of California, that the
21 foregoing is true and correct. Executed this 22nd day of June, 2021 at Calabasas, California.

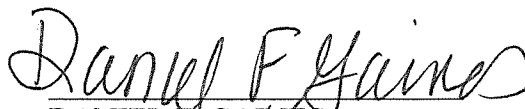
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ELENA PUNTY, on behalf of herself and
all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

HOSKINS & MUIR, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: RG20064854

Assigned to the Honorable James Reilly, Dept. 25

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: June 15, 2020

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement") is made and
3 entered into by and between Plaintiff Elena Punty ("Plaintiff", "Punty", or "Class Representative"),
4 individually and on behalf of all others similarly situated, and Defendant Hoskin & Muir, Inc.
5 (erroneously sued as Hoskins & Muir, Inc., "Hoskin" or "Defendant"), subject to the terms and
6 conditions herein and the Court's approval.

7 **A. Definitions.**

8 1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively
9 referred to herein as "the Parties."

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff Elena Punty, and Donna King Perry, Heather N. Stone, and Matthew W. Barszcz
12 of Dinsmore & Shohl LLP are counsel of record for Defendant Hoskin & Muir, Inc. For purposes
13 of this Settlement Agreement only, the firm of Gaines & Gaines, APLC shall be designated as
14 "Class Counsel."

15 3. The "Action" means the case of *Elena Punty, et al. v. Hoskins & Muir, Inc., et al.*,
16 Alameda County Superior Court Case No. RG20064854.

17 4. The "Settlement Class" shall be defined as all persons who are or were employed
18 by Defendant Hoskin & Muir, Inc. as non-exempt hourly employees in the State of California at
19 any time from June 15, 2016 to March 25, 2021. Defendant represents that the class size is
20 approximately 133 class members as of March 25, 2021.

21 5. The "Class Period" is June 15, 2016 to March 25, 2021.

22 6. Members of the Settlement Class shall collectively be referred to as a "Class
23 Member" or "Class Members." Any Class Member who files a timely request for exclusion, as
24 detailed below, will be excluded from the final Settlement Class.

25 **B. General.**

26 1. On March 25, 2020, Plaintiff Punty exhausted the pre-filing requirements of the
27 Labor Code Private Attorneys General Act of 2004 ("PAGA").
28

1 2. On June 15, 2020, Plaintiff Punty initiated her Action in the Alameda County
2 Superior Court by filing a complaint, pursuant to PAGA, on behalf of herself and all other aggrieved
3 employees.

4 3. As set forth in the proposed First Amended Complaint attached hereto as **Exhibit 3**,
5 which the Parties will seek to file as part of the motion for preliminary approval of this Settlement
6 Agreement, the Action asserts class and representative claims against Defendant for (1) failure to
7 provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, 558 and IWC
8 Wage Orders 4-2001); (2) failure to provide rest periods or compensation in lieu thereof (Labor
9 Code §§ 226.7, 558 and IWC Wage Orders 4-2001); (3) knowing and intentional failure to comply
10 with itemized employee wage statement provisions, including failure to maintain accurate records
11 (Labor Code §§ 226(a) and 226.3); (4) failure to timely pay wages at the separation of employment
12 (Labor Code §§ 201-203); (5) violation of Business and Professions Code § 17200 for underlying
13 violations of the Labor Code as set forth above; and (6) civil penalties pursuant to PAGA for
14 underlying violations of the Labor Code as set forth above.

15 4. Defendant denies any liability or wrongdoing of any kind associated with the claims
16 alleged in the Actions, and further denies that the Actions are appropriate for class treatment for
17 any purpose other than this settlement. Defendant contends that it has complied at all times with
18 the California Labor Code. It is Defendant's position that, if this case were to be litigated, class
19 certification would be inappropriate because Plaintiff is not an adequate class representative,
20 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
21 class issues, among other defenses. The Action, the negotiation and execution of this Settlement
22 Agreement, and all acts performed or documents executed pursuant to or in furtherance of this
23 Settlement Agreement (i) shall not be used as an admission, or as evidence of wrongdoing by the
24 Defendant, or for any other purpose whatsoever; (ii) shall not be an admission or evidence of fault
25 on behalf of Defendant in any action before a civil court, criminal court, administrative agency of
26 any type, or other tribunal; and (iii) shall not be deemed to be, and may not be used as, an admission
27 or evidence of the appropriateness of these or similar claims for class certification in the Actions
28 or with respect to any other proceeding whatsoever.

1 5. The Class Representative contends that Defendant violated the California Labor
2 Code and that this case is appropriate for class certification.

3 6. Throughout discovery, Class Counsel have conducted a thorough investigation into
4 the facts and law at issue in this case, including the exchange of extensive informal discovery and
5 the review and verification of statistical data and other facts and information provided by
6 Defendant.

7 7. On March 25, 2021, the Parties participated in a full day mediation session with Lisa
8 Klerman, Esq., a well-respected mediator with extensive experience resolving employment wage
9 and hour actions. The mediation did not culminate with any agreement to resolve the Actions, but
10 following further extended negotiations with the assistance of Ms. Klerman, the basic terms of this
11 Settlement Agreement were reached.

12 8. Based on their own independent investigation and evaluation, Class Counsel are of
13 the opinion (and will so represent to the Court) that settlement for the consideration and on the
14 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
15 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
16 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
17 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
18 that this Settlement Agreement is fair and in the best interest of the Settlement Class.

19 9. The Parties agree that the Settlement Class described herein may be certified for
20 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
21 Settlement Class is for purposes of settlement only. If for any reason the settlement is not approved,
22 the certification shall have no force or effect and the settlement and will immediately be revoked.
23 The Parties further agree that certification for purposes of approving the Settlement Agreement is
24 in no way an admission that class certification is proper under the more stringent standard applied
25 for litigation and that evidence of this limited stipulation for settlement purposes only will not be
26 admissible for any purpose in this or any other proceeding.

27 **C. Terms of Settlement.**

28 1. The financial terms of the Settlement Agreement are as follows:

1 (a) **Maximum Settlement Amount:** The Parties agree to settle the Action for a
2 non-reversionary Maximum Settlement Amount of Three Hundred Thousand U.S. Dollars
3 (\$300,000) (“the Maximum Settlement Amount”). The Maximum Settlement Amount includes all
4 payments for wages, penalties, and interest; the attorneys’ fees of Class Counsel; litigation costs
5 and expenses of Class Counsel (which includes, without limitation, all such fees and costs incurred
6 to date, as well as such fees and costs to be incurred in documenting the Settlement Agreement,
7 providing any notices required as part of the Settlement Agreement, securing Court approval of the
8 Settlement Agreement, and obtaining judgment in the Action); the service payment and general
9 release payment to the Class Representative, as approved by the Court; the payment to the
10 California Labor and Workforce Development Agency (“LWDA”) pursuant to the PAGA claims
11 in the Action; and all costs of administration, including, without limitation, settlement
12 administration fees and expenses and employee-side employment taxes. Defendant shall pay all
13 employer payroll tax obligations due on Individual Payment Amounts (defined in Paragraph
14 C(1)(c) below) made from the Net Settlement Proceeds in addition to, and separate and apart from,
15 the Maximum Settlement Amount.

16 (b) **Net Settlement Proceeds:** “Net Settlement Proceeds” is defined as the
17 Maximum Settlement Amount less the amounts approved and awarded by the Court as follows: (1)
18 attorneys’ fees and documented litigation costs and expenses incurred or advanced by Class
19 Counsel; (2) the service and general release payments to the Class Representative; (3) the payment
20 to the LWDA pursuant to PAGA; and (4) the costs of administering the Settlement Agreement.

21 (c) **Calculation of the Individual Payment Amounts:** “Individual Payment
22 Amount” means the portion of the Net Settlement Proceeds distributable to each Class Member
23 who participates in the Settlement (*i.e.*, who does not submit a valid Request for Exclusion Form).
24 The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by
25 the total weeks worked (and during which compensation was paid) by all participating Class
26 Members in California during the Class Period, which will yield the weekly settlement rate. The
27 weekly settlement rate shall be multiplied by the number of weeks each individual participating
28 Class Member worked (and during which compensation was paid) for Defendant in California

1 during the Class Period to yield their Individual Payment Amount. Each Class Member who does
2 not opt out of the Settlement shall be paid an Individual Payment Amount. All weeks worked
3 calculations herein shall be made by reference to Class Members' hire and termination dates and
4 payroll data contained in the records kept by Defendant in the ordinary course of business during
5 the Class Period.

6 i. For tax purposes, each Individual Payment Amount will be
7 apportioned (a) 20% to wages (reported on an IRS Form W-2 and subject to applicable
8 withholdings/taxes); (b) 60% to penalties (reported on an IRS Form 1099, if required); and (c) 20%
9 to interest (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to
10 Class Members will be subject to any applicable employee-side payroll taxes, wage garnishments,
11 liens, or other legally mandated treatment as required by law.

12 (d) **PAGA Payments:** The Parties agree that Thirty Thousand Dollars
13 (\$30,000) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount,
14 Seventy-Five Percent (75%), or Twenty-Two Thousand Five Hundred Dollars (\$22,500) shall be
15 paid to the LWDA, and Twenty-Five Percent (25%), or Seven Thousand Five Hundred Dollars
16 (\$7,500) shall be paid to Class Members who have not submitted a valid and timely request for
17 exclusion form ("Request for Exclusion Form") as part of the Net Settlement Proceeds.

18 (e) **Service Payment and General Release Payment to Class Representative:**
19 The amount awarded to the Class Representative as a service payment and in exchange for a general
20 release, as set forth in Paragraph D(2) below, will be set by the Court in its discretion, not to exceed
21 Ten Thousand Dollars (\$10,000). This amount will be deducted from the Maximum Settlement
22 Amount. An IRS Form 1099 will be issued to the Class Representative for her Service Payment.
23 Defendant agrees not to dispute or otherwise object to the Service Payment if Plaintiff requests
24 \$10,000 or less.

25 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
26 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
27 account the settlement award that has been made available for the Settlement Class by the efforts
28 of Class Counsel. The amount awarded shall not exceed 33-1/3% of the Maximum Settlement

1 Amount, which is projected to be \$100,000 based on the Maximum Settlement Amount of
2 \$300,000. An IRS Form 1099 will be issued to Class Counsel with respect to its award of attorneys'
3 fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award requested by
4 Class Counsel so long as the request does not exceed one-third of the Maximum Settlement
5 Amount.

6 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
7 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
8 pocket litigation costs and expenses, not to exceed Twelve Thousand Five Hundred Dollars
9 (\$12,500). An IRS Form 1099 will be issued to Class Counsel with respect to its award of costs
10 and expenses. Defendant agrees not to dispute or otherwise object to the attorneys' cost award
11 requested by Class Counsel so long as the request does not exceed \$12,500.

12 (h) **Settlement Administration Costs:** The fees and other charges of the
13 Settlement Administrator to administer the Settlement are expected to total no more than Five
14 Thousand Dollars (\$5,000) and will be paid from the Maximum Settlement Amount. These fees
15 shall include any costs associated with the required tax reporting on any Individual Payment
16 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the
17 Parties have agreed that ILYM Group, Inc. will serve as a neutral third-party claims' administrator
18 ("Settlement Administrator") to perform all acts related to providing notice to the Settlement Class.
19 Settlement Administrator shall be responsible for (a) printing and distributing the Court-approved
20 Notice of Class Action Settlement ("Class Notice") to all Class Members; (b) administering the
21 settlement; (c) processing exclusions and objections; (d) resolving disputes based upon Defendant's
22 records; (e) distributing the Maximum Settlement Amount as directed by the Court and set forth
23 herein; (f) tax reporting; (g); including but not limited to providing weekly status reports to the
24 Parties and providing declarations, as needed, to the Court, regarding the status of settlement
25 administration. Such weekly status reports shall include, at a minimum: (i) the number of Class
26 Members who have submitted timely, valid Request for Exclusion Forms and/or Objections; (ii)
27 whether any Class Member has submitted a challenge to any other information contained in the
28 Notice; and (iii) statistics showing which disputes that have been resolved and which have not been

1 resolved. Additionally, the Claims Administrator will provide to counsel for both Parties any
2 updated reports as needed or requested; and (h) other duties and responsibilities set forth herein.

3 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
4 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
5 makes no representations regarding tax obligations or consequences, if any, related to this
6 Settlement Agreement or the settlement.

7 **D. Release of Claims.**

8 1. Upon the Effective Date, defined in Paragraph E(13) below, and subject to
9 Defendant's full payment of all sums required hereunder, Plaintiff and all Class Members who do
10 not timely opt-out of this settlement will be deemed to have fully released and discharged
11 Defendant, and any of its related companies, its affiliated entities, its current and former parent
12 entities, predecessors, successors, assigns, investors, current and former employees, agents,
13 members, directors, officers, shareholders, representatives, managers, principals, transferors,
14 transferees, administrators, insurers and attorneys ("Released Parties") from any and all Released
15 Claims which arose during the Class Period. "Released Claims" are any and all claims and
16 damages, penalties and interest arising from any and all facts and claims asserted in the Action or
17 any other claims that could have been asserted in the Action based on the facts alleged, including,
18 without limitation, for premium wages for missed, late or interrupted meal and rest periods, late
19 pay claims, itemized wage statement violations, unfair business practices and PAGA penalties.

20 2. In addition to the Release of Claims in Paragraph D(1), above, and in exchange for
21 her Service Payment, Plaintiff makes the additional following general release of all claims, known
22 or unknown. Upon the Effective Date, defined in Paragraph E(13) below, and subject to
23 Defendant's full payment of all sums required hereunder, Plaintiff hereby, for herself and her
24 respective spouse, heirs, current and former agent(s), representatives, attorneys, executors,
25 administrators, transferors, transferees, successors and assigns, forever releases Defendant and the
26 Released Parties from any and all claims, demands, rights, liabilities, suits, rights, costs, losses,
27 debts, and expenses (including back wages, penalties, and attorneys' fees and costs actually
28 incurred) of any nature whatsoever, from the beginning of time through the date of their respective

signatures on this Agreement, known or unknown, suspected or unsuspected, including, but not limited to, all claims arising out of, based upon, or relating to their employment with Defendant or the compensation for, or termination of, such employment. Without limiting the generality of the foregoing, Plaintiff expressly releases all claims or rights arising out of alleged violations of any contracts, express or implied (including, but not limited to, any contract of employment); any contract or covenant of good faith and fair dealing (express or implied); any tort, including negligence, fraud, misrepresentation under California Labor Code 970, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any "wrongful discharge," "constructive discharge," and "retaliation" claims; any claims relating to any breach of public policy; any legal restrictions on Defendant's right to discharge employees; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment), as amended; (2) 42 U.S.C. § 1981 (discrimination), as amended; (3) Equal Pay Act of 1963, 29 U.S.C. § 209(d)(1) (equal pay), as amended; (4) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination, as amended); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave), as amended; (6) California Fair Employment and Housing Act, Cal. Gov't Code § 12900 *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, medical condition, genetic information, marital status, sex (including pregnancy), gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, including retaliation for reporting discrimination or harassment), as amended; (7) California Family Rights Act, Cal. Gov't Code § 12945.1 *et seq.* (family/medical leave), as amended; (8) California Labor Code or any Industrial Welfare Commission Wage Order, as amended; (9) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as amended; (10) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (11) Executive Order 11141 (age discrimination); (12) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (13) Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1000 *et seq.*

(employee benefits); and (14) any claim for a bonus, holiday pay, vacation pay, life insurance, health or medical insurance or any other monetary compensation or benefit, as well as all claims for attorneys' fees, costs and expenses. Workers' compensation claims are excluded from the General Release; however, this General Release does apply to petitions for increased workers' compensation benefits pursuant to California Labor Code sections 132a and 4553. (The release set forth herein shall be referred to hereinafter as the "General Release.")

With respect to this General Release, Plaintiff stipulates and agrees that, upon the Effective Date, Plaintiff Punty shall be deemed to have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under state law, with the exception of workers' compensation claims, 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.

Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

E. Notice and Exclusion Process.

1. Within fourteen (14) calendar days after entry of the order granting preliminary approval, Defendant shall provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, Social Security numbers, and their total weeks worked in California during the Class Period during which they received compensation ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All information provided to the Settlement Administrator will be marked CONFIDENTIAL. This information shall be kept confidential and shall not be disclosed, either in writing or orally, by the Settlement Administrator. The Settlement Administrator shall use due care with respect to the

1 storage, custody, use, and/or dissemination of the confidential information. Such information must
2 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.
3 The Settlement Administrator shall destroy all settlement administration related documents and
4 files after the administration is completed.

5 2. A notice of pendency of class action, proposed settlement and hearing date for Court
6 approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the Court,
7 shall be sent by the Settlement Administrator to the Class Members in English only, by first class
8 mail, within twenty-one (21) calendar days after entry of the order granting preliminary approval.
9 Attached to the Class Notice will be a Request for Exclusion Form in the form attached hereto as
10 **Exhibit 2.**

11 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
12 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
13 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
14 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
15 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
16 notices.

17 4. Each Class Member will be fully advised of the Settlement Agreement, the ability
18 to object to the Settlement Agreement, and the ability to submit a Request for Exclusion Form. The
19 Class Notice will inform the Class Members of the Court-established deadlines for filing objections
20 and a Request for Exclusion Form.

21 5. Each Class Notice will contain personalized information setting forth the total
22 number of weeks each Class Member worked (and during which they received compensation) for
23 Defendant in California during the Class Period and their estimated Individual Payment Amount.
24 The Class Notice will also set forth IRS W-9 information, if required. To the extent a Class Member
25 disputes any of the information listed on his or her Class Notice, the Class Member may produce
26 evidence to the Settlement Administrator showing such information the Class Member contends
27 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
28 however, and the Settlement Administrator's decision on these matters will be final.

1 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
2 to receive an Individual Payment Amount, which shall be mailed to them if and when the Effective
3 Date (defined in Paragraph E(13) below) occurs.

4 7. In order to elect not to participate in the Settlement, a Class Member must submit a
5 Request for Exclusion, and mail it to the Settlement Administrator no later than sixty (60) calendar
6 days after the initial mailing of the Class Notice and Request for Exclusion Form to Class Members,
7 unless the Court requires a longer period, in which case the Court ordered exclusion period will
8 apply. The date of the postmark shall be deemed the date of submission. The timeliness of
9 submitted Request for Exclusion Forms will be determined by valid postmark. If the 60th day falls
10 on a Sunday or federal holiday, the time to request exclusion will be extended to the next day on
11 which the U.S. Postal Service is open.

12 8. The deadline for submission of Request for Exclusion Forms shall be extended once
13 by 15 days for those Class Members whose Class Notice and Request for Exclusion Form are
14 returned as “undeliverable.” If the 15th day falls on a Sunday or federal holiday, this deadline will
15 be extended to the next day on which the U.S. Postal Service is open.

16 9. The Settlement Administrator will search for additional addresses on returned mail
17 and will re-mail the Class Notice and Request for Exclusion Form to an updated address (if any)
18 within 15 days of receipt of the returned mail. The 15-day extended time limit will run from the
19 date of the second mailing for those Class Members. To the extent a Class Notice from the initial
20 mailing is not returned within 30 days, it shall be deemed to have been sent to a valid address even
21 if it is thereafter returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts
22 be used to locate Class Members. If the initial Class Notice and Request for Exclusion form is
23 returned, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip
24 trace,” to obtain an updated mailing address within five (5) business days of receiving the returned
25 Class Notice.

26 10. Following the initial mailing of the Class Notice and Request for Exclusion Forms
27 to Class Members, the Settlement Administrator will provide weekly reports to the Parties of the
28 total number of valid Request for Exclusion Forms. The last such report will be provided within

1 ten (10) calendar days after the deadline for receipt of the Request for Exclusion Forms (seventy
2 (70) days following the initial mailing of the Class Notice and Request for Exclusion Forms to
3 Class Members).

4 11. In order to object to the Settlement Agreement, a Class Member must mail his or
5 her objection to the Settlement Administrator no later than sixty (60) calendar days after the mailing
6 of the Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a
7 longer period, in which case the Court ordered objection period will apply. If the 60th day falls on
8 a Sunday or federal holiday, the time to object to the Settlement Agreement will be extended to the
9 next day on which the U.S. Postal Service is open. Under no circumstances shall the objection
10 deadline be extended for any reason.

11 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
12 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
13 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
14 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
15 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
16 listing the amount of all payments to be made to each Class Member without names or personal
17 identifying information.

18 13. Defendant shall deposit the Maximum Settlement Amount and all employer payroll
19 tax obligations with the Settlement Administrator no later than ten (10) calendar days after the
20 Effective Date. "Effective Date" means the date when the order entered by the Court granting
21 final approval of the Settlement and judgment thereon ("Final Approval Order") becomes
22 final. For purposes of this Settlement Agreement, the Final Approval Order becomes "final": (1)
23 if there are no objectors, the day the Court enters the Final Approval Order; (2) if there are any
24 objectors and the date or time to appeal or seek permission to appeal or seek other judicial review
25 of the Final Approval Order/the Entry of Judgment approving the Settlement Agreement has
26 expired with no appeal or other judicial review having been taken or sought, 61 days after the
27 Court enters the order of final approval; or (3) if there are objectors and if an appeal or other
28 judicial review has been taken or sought within 61 days after the Court enters the Final Approval

Order, the date all objections or appeals are withdrawn, the Final Approval Order/Entry of Judgment is finally affirmed or other judicial review therefrom, or the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review. In the event that the Court does not approve the Settlement, or if the Final Approval Order is reversed on appeal, then there shall be no Effective Date and this Settlement Agreement shall become null and void.

14. The Settlement Administrator shall disburse the Maximum Settlement Amount within fifteen (15) calendar days after its receipt thereof. Class Members must cash each of their Individual Payment Amount checks within one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The value of any checks uncashed more than one hundred eighty (180) days after mailing shall be paid to the State of California Controller's Office, to be held in the name of the respective Class Member.

F. Duties of the Parties Prior to Court Approval.

1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for preliminary approval of this Settlement Agreement and entry of an order accomplishing the following:

(a) Authorizing Plaintiff to file the First Amended Complaint in the form attached hereto as **Exhibit 3**;

(b) scheduling a fairness hearing on the question of whether the proposed Settlement Agreement should be finally approved as fair, reasonable and adequate as to the Class Members;

(c) approving as to form and content the proposed Class Notice;

(d) approving as to form and content the proposed Request for Exclusion Form;

(e) preliminarily certifying the Settlement Class for purposes of approving the Settlement Agreement;

(f) preliminarily approving the PAGA payment of \$22,500 to the LWDA;

(g) preliminarily setting attorneys' fees and costs payable to Class Counsel;

(h) preliminarily setting the service/general release payment to the Class Representative; and

(i) preliminarily approving ILYM Group, Inc. as the Settlement Administrator and its estimated fees and costs of \$5,000.

2. The Parties shall submit this Settlement Agreement to the Court and the LWDA in support of Plaintiff's unopposed motion for preliminary approval of the Settlement Agreement.

G. Duties of the Parties in Connection with and Following Final Court Approval.

1. In connection with the hearing on final approval of the Settlement Agreement, the Parties will submit a proposed final order no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court):

(a) approving the Settlement Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) approving Class Counsel's application for an award of attorneys' fees and reimbursement of documented litigation costs and expenses, the service/general release payments to the Class Representative, the payment to the LWDA, and the costs of administering the Settlement Agreement; and

(c) Entering judgment in the Actions in accordance with this Stipulation, pursuant to Cal. Rules of Court, Rule 3.769(h).

2. Class Counsel shall file an application for attorneys' fees and reimbursement of costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court).

H. Miscellaneous Provisions:

1. Voiding the Agreement/Opt-Out Threshold

A failure of the Court to approve any material condition of this Settlement Agreement which effects "a fundamental change of the Parties' settlement of the Actions," or if the settlement of the Actions is reversed or materially modified on appellate review, shall render the entire Stipulation of Settlement voidable and unenforceable as to all Parties herein at the option of any Party.

1 **2. Parties' Authority.**

2 The signatories hereto represent that they are fully authorized to enter into this Settlement
3 Agreement and bind the Parties hereto to the terms and conditions hereof.

4 **3. Mutual Full Cooperation.**

5 The Parties agree to fully cooperate with each other to accomplish the terms of this
6 Settlement Agreement and Release of Claims, including but not limited to, execution of such
7 documents and such other action as may reasonably be necessary to implement the terms of this
8 Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts,
9 including all efforts contemplated by this Settlement Agreement and any other efforts that may
10 become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and
11 the terms set forth herein. As soon as practicable after execution of this Settlement Agreement,
12 Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all
13 necessary steps to secure the Court's preliminary and final approval of the Settlement Agreement.

14 **4. No Prior Assignments.**

15 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
16 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
17 entity any portion of any liability, claim, demand, action, cause of action or rights released and
18 discharged by this Stipulation of Settlement and Release of Claims.

19 **5. No Admission.**

20 Nothing contained herein, nor the consummation of this Settlement Agreement and Release
21 of Claims, is to be construed or deemed an admission of liability, culpability, negligence, or
22 wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties
23 hereto has entered into this Settlement Agreement with the intention of avoiding further disputes
24 and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
25 settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal
26 Rule of Evidence 408 and/or any other similar law, be inadmissible in evidence in any proceeding,
27 except an action or proceeding to approve the settlement of the Actions and/or interpret or enforce
28 this Settlement Agreement.

1 **6. Notices.**

2 Unless otherwise specifically provided herein, all notices, demands or other
3 communications given hereunder shall be in writing and shall be deemed to have been duly given
4 as of the third business day after mailing by United States registered or certified mail, return receipt
5 requested, addressed:

6 **To Plaintiff and the Settlement Class:**

7 Daniel F. Gaines, Esq.
8 Alex P. Katofsky, Esq.
9 GAINES & GAINES, APLC
 27200 Agoura Road, Suite 101
 Calabasas, CA 91301

10 **To Defendant:**

11 Donna King Perry, Esq.
12 Heather N. Stone, Esq.
13 Matthew W. Barszcz, Esq.
14 DINSMORE & SHOHL LLP
 655 West Broadway, Suite 800
 San Diego, CA 92101

15 **7. Construction.**

16 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
17 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
18 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
19 any Party or his/her or its counsel participated in the drafting of this Settlement Agreement.

20 **8. Captions and Interpretations.**

21 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
22 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
23 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
24 recital.

25 **9. Modification.**

26 This Settlement Agreement may not be changed, altered, or modified, except in writing and
27 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
28 discharged except by performance in accordance with its terms or by a writing signed by each of

1 the Parties hereto or their attorneys.

2 **10. Integration Clause.**

3 This Settlement Agreement contains the entire agreement between the Parties relating to
4 the settlement of the Action and transactions contemplated hereby, and all prior or
5 contemporaneous agreements, understandings, representations, and statements, whether oral or
6 written and whether by a Party or such Party's legal counsel, are merged herein. No rights
7 hereunder may be waived except in writing.

8 **11. Binding on Assigns.**

9 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
10 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

11 **12. Governing Law.**

12 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
13 according to the laws of the State of California, without giving effect to any conflict of law
14 principles or choice of law principles.

15 **13. Signatures of All Class Members Unnecessary to be Binding.**

16 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
17 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
18 attached hereto as **Exhibit 1**, will advise all Class Members of the binding nature of the release
19 provided herein and such shall have the same force and effect as if this Settlement Agreement was
20 executed by each Class Member.

21 **14. Counterparts.**

22 This Settlement Agreement may be executed in counterparts, and when each Party has
23 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
24 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
25 Agreement, which shall be binding upon and effective as to all Parties. A facsimile, PDF or
26 electronic signature shall be effective and is deemed to be an original.

27 **15. Confidentiality**

28 Until Plaintiff files her motion for preliminary approval of the class action settlement of the

1 Actions, the Parties and their Counsel agree to maintain confidentiality as to the Settlement
 2 Agreement, including the amount and terms of the Settlement, except as to spouses, tax or financial
 3 advisors, attorneys, taxing agencies, or as otherwise required by law.

4 **16. No Publicity**

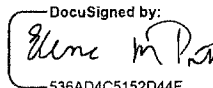
5 Plaintiff and her Counsel will not contact the media about the Settlement Agreement or
 6 respond to any inquiries by the media regarding the Settlement, other than to state that the matter
 7 was amicably settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also
 8 will not post any information about the Settlement Agreement on social media or their firms'
 9 websites.

10 **17. Escalator Provision re: Maximum Settlement Amount**

11 Defendant has represented to Plaintiff and her counsel that the Settlement Class includes no more
 12 than 133 individuals as of March 25, 2021. Should that representation be incorrect and the final
 13 size of the Settlement Class through March 25, 2021 exceeds 133 individuals, then Plaintiff may
 14 terminate this Agreement unless Defendant agrees to increase the Maximum Settlement Amount
 15 proportionately with the size of the increase of the Settlement Class (i.e. 1/133, per additional
 16 Settlement Class member.
 17
 18
 19

20 Dated: June 10, 2021

By:

DocuSigned by:


536AD4C5152D44E
 ELENA PUNTY
 Plaintiff and Class Representative

24 Dated: _____

HOSKIN & MUIR, INC.

26 By:

27 Name: _____
 28 Title: _____

1 Actions, the Parties and their Counsel agree to maintain confidentiality as to the Settlement
2 Agreement, including the amount and terms of the Settlement, except as to spouses, tax or financial
3 advisors, attorneys, taxing agencies, or as otherwise required by law.

4 16. **No Publicity**

5 Plaintiff and her Counsel will not contact the media about the Settlement Agreement or
6 respond to any inquiries by the media regarding the Settlement, other than to state that the matter
7 was amicably settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also
8 will not post any information about the Settlement Agreement on social media or their firms'
9 websites.

10 17. **Escalator Provision re: Maximum Settlement Amount**

11 Defendant has represented to Plaintiff and her counsel that the Settlement Class includes no more
12 than 133 individuals as of March 25, 2021. Should that representation be incorrect and the final
13 size of the Settlement Class through March 25, 2021 exceeds 133 individuals, then Plaintiff may
14 terminate this Agreement unless Defendant agrees to increase the Maximum Settlement Amount
15 proportionately with the size of the increase of the Settlement Class (i.e. 1/133, per additional
16 Settlement Class member.
17
18
19

20 Dated: _____

By: _____

21 ELENA PUNTY
22 Plaintiff and Class Representative
23

24 Dated: _____

HOSKIN & MUIR, INC.

26 By: _____

27 Name: Deborah Handley
28 Title: HR Director

1 **APPROVED AS TO FORM AND CONTENT:**

2
3 Dated: June 10, 2021

GAINES & GAINES, APLC

4
5 By: Daniel F. Gaines
6 Daniel F. Gaines, Esq.
7 Alex P. Katofsky, Esq.
8 Counsel for Plaintiff Elena Punt
9 and Class Representative

10 Dated: _____

DINSMORE & SHOHL LLP

11
12 By: _____
13 Donna King Perry, Esq.
14 Heather N. Stone, Esq.
15 Matthew W. Barszcz, Esq.
16 Counsel for Defendant
17 Hoskin & Muir, Inc.
18
19
20
21
22
23
24
25
26
27
28

1 APPROVED AS TO FORM AND CONTENT:

2
3 Dated: _____

GAINES & GAINES, APLC

4
5 By: _____
6 Daniel F. Gaines, Esq.
7 Alex P. Katofsky, Esq.
8 Counsel for Plaintiff Elena Punty
9 and Class Representative

10 Dated: 6/21/21

DINSMORE & SHOHL LLP

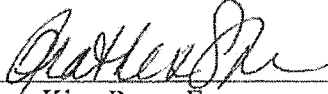
11
12 By: 
13 Donna King Perry, Esq.
14 Heather N. Stone, Esq.
15 Matthew W. Barszcz, Esq.
16 Counsel for Defendant
17 Hoskin & Muir, Inc.

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ELENA PUNTY, on behalf of herself and all
“aggrieved employees” pursuant to Labor Code
§ 2698 *et seq.*,

Plaintiffs,

v.

HOSKINS & MUIR, INC., a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: RG20064854

*Assigned to the Honorable James Reilly, Dept.
25*

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

Complaint Filed: June 15, 2020

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT

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

- A settlement will provide \$300,000 to pay claims to all persons who are or were employed by Defendant Hoskin & Muir, Inc. (“Defendant”) as non-exempt hourly employees in the State of California at any time from June 15, 2016 to March 25, 2021.
- The settlement resolves a lawsuit over whether Defendant failed to provide meal breaks, failed to provide rest breaks, failed to timely pay wages upon separation of employment, and failed to provide accurately itemized wage statements, engaged in unfair business practices and was subject to penalties under the Private Attorneys General Act (PAGA), all as set forth in the First Amended Class and Representative Action Complaint (the “Lawsuit”). The settlement avoids costs and risks to you from continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$100,000 as attorneys’ fees and \$12,500 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.
- **Your legal rights are affected whether you act or do not act. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims that were brought in this case.
Object	Write to the Court about why you do not like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On June 15, 2020, Plaintiff Punty initiated her complaint in the Alameda County Superior Court by filing a complaint, pursuant to PAGA, on behalf of herself and all other aggrieved employees. As amended, the Lawsuit asserts claims against Defendant for (1) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, 558 and IWC Wage Orders 4-2001); (2) failure to provide rest periods or compensation in lieu thereof (Labor Code §§ 226.7, 558 and IWC Wage Orders 4-2001); (3) knowing and intentional failure to comply with itemized employee wage statement provisions, including failure to maintain accurate records (Labor Code §§ 226(a) and 226.3); (4) failure to timely pay wages at the separation of employment (Labor Code §§ 201-203); (5) violation of Business and Professions Code § 17200 for underlying violations of the Labor Code as set forth above; and (6) civil penalties pursuant to PAGA for underlying violations of the Labor Code as set forth above. The Lawsuit seeks to certify the following class: as all persons who are or were employed by Defendant Hoskin & Muir, Inc. as non-exempt hourly employees in the State of California at any time from June 15, 2016 to March 25, 2021 (the "Class Period"). The lawsuit seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys' fees and costs. Defendant denies all of the material allegations in the Lawsuit.

The lawyers for the parties are:

Plaintiff Elena Punty:

Daniel F. Gaines, Esq.
 Alex P. Katofsky, Esq.
 GAINES & GAINES, APLC
 27200 Agoura Road, Suite 101
 Calabasas, CA 91301
 (866) 550-0855

Defendant Hoskin & Muir, Inc.:

Donna King Perry, Esq.

Heather N. Stone, Esq.

Matthew W. Barszcz, Esq.

DINSMORE & SHOHL LLP

655 West Broadway, Suite 800

San Diego, CA 92101

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff's Attorneys think the settlement is fair, reasonable and adequate and in the best interests of all Class members.

B. Who is in the Settlement Class?

The Settlement encompasses the following class: all persons who are or were employed by Defendant Hoskin & Muir, Inc. as non-exempt hourly employees in the State of California at any time from June 15, 2016 to March 25, 2021.

C. What does the Settlement provide?

1. Maximum Settlement Amount.

Defendant will pay \$300,000 (the "Maximum Settlement Amount") to settle the lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) \$22,500 to the California Labor and Workforce Development Agency; (2) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$100,000 and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$12,500; (3) a service payment and general release payment to the Class Representative set by the court, not to exceed \$10,000, for her service in the Lawsuit and in exchange for her general release of all claims; and (4) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$5,000. The amount of the Maximum Settlement Amount remaining after these payments is the "Net Settlement Proceeds."

2. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

After the Court approves the Settlement and any appeals have been resolved, Plaintiff and all Class Members who do not timely opt-out of this settlement will be deemed to have fully released and discharged Defendant, and any of its related companies, its affiliated entities, its current and former parent entities, predecessors, successors, assigns, investors, current and former employees, agents, members, directors, officers, shareholders, representatives, managers, principals, transferors, transferees,

administrators, insurers and attorneys (“Released Parties”) from any and all Released Claims which arose during the Class Period. “Released Claims” any and all claims and damages, penalties and interest arising from any and all facts and claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged, including, without limitation, for premium wages for missed, late or interrupted meal and rest periods, late pay claims, itemized wage statement violations, unfair business practices and PAGA penalties.

E. How Is My Share Of The Settlement Calculated?

Each participating claimant (those who do not opt out of the Settlement) shall receive an individual payment amount, which is a share of the Net Settlement Proceeds (Net Settlement Proceeds is calculated by deducting attorneys’ fees and costs, claims administration costs, any service and general release payment to the Class Representative, and the Labor and Workforce Development Agency’s share of the PAGA penalty payment from the Maximum Settlement Amount) (“Individual Payment Amount”).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked (and during which compensation was paid) by all participating Class Members in California during the Class Period, which will yield the weekly settlement rate. The weekly settlement rate shall be multiplied by the number of weeks each individual participating Class Member worked (and during which compensation was paid) for Defendant in California during the Class Period to yield their Individual Payment Amount. Each Class Member who does not opt out of the Settlement shall be paid an Individual Payment Amount. All hours worked calculations herein shall be made by reference to Class Members’ hire and termination dates and payroll data contained in the records kept by Defendant in the ordinary course of business during the Class Period.

For tax purposes, each Individual Payment Amount will be apportioned (a) 20% to wages (reported on an IRS Form W-2 and subject to applicable withholdings/taxes); (b) 60% to penalties (reported on an IRS Form 1099, if required); and (c) 20% to interest (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable employee-side payroll taxes, wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [_____] weeks while employed in California between June 15, 2016 and March 25, 2021. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[_____]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2021. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on _____, 2021, at _____ a.m., in Department 25, Judge James Reilly presiding, of the Alameda County Superior Court, located at 1225 Fallon Street, Oakland, California 94612. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Class Members; (iii) whether the Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as a service and general release payment.

At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [60 days after mailing]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. If you object in writing, you may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Objections must be postmarked no later than _____ [60 days after mailing].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____ [60 days after mailing].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Alameda County Superior Court, located at 1225 Fallon Street, Oakland, California 94612.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number] or Plaintiff's Counsel, Gaines & Gaines, APLC, at 866-550-0855. Please refer to the Hoskins & Muir, Inc. Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT of the class action lawsuit entitled *Elena Punty, et al. v. Hoskins & Muir, Inc., et al.*, Alameda County Superior Court Case No. RG20064854.

IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.

I confirm that I was employed by Defendant Hoskin & Muir, Inc. as a non-exempt hourly employee in the State of California at some time between June 15, 2016 and March 25, 2021.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE [60 days after mailing of Notice]. Send this signed request for exclusion form to the Settlement Administrator:

Hoskins & Muir, Inc. Settlement Administrator
c/o ILYM Group, Inc.

EXHIBIT 3

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Facsimile: (818) 703-8984

Attorneys for Plaintiff Elena Punty, on behalf of herself and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ELENA PUNTY, on behalf of herself and all
"aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*,

Plaintiffs,

v.

HOSKINS & MUIR, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: RG20064854

Assigned to the Hon. James Reilly, Dept. 25

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**1. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 4-2001)**

**2. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 4-2001)**

**3. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

**4. FAILURE TO PAY WAGES DUE AT
SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203)**

**6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

**7. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201-202, 226(a), 226.7,
AND 512 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: June 15, 2020

Plaintiff ELENA PUNTY (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, as defined below, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 et seq., on behalf of Plaintiff and all other non-exempt employees who work or formerly worked for HOSKIN & MUIR, INC., a California corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within the State of California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”) Defendants have had a consistent policy of failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; provide accurately itemized wage statements to Class Members; and to timely pay wages upon separation of employment to Class Members.

3. Plaintiff, on behalf of herself and members of the Class, bring this action pursuant to Labor Code §§ 201, 202, 203, 226, 226.3, 226.7, and 512, seeking compensation for all unpaid premium wages for missed and denied meal and rest periods, statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

5. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against each Defendant herein arose in Alameda County, California.

PARTIES

A. Plaintiff

7. Plaintiff ELENA PUNTY was employed by Defendants from January 2019 through December 2019 in Alameda County, California.

8. During her work with Defendants, Plaintiff was:

- a. Willfully denied rest periods or compensation in lieu thereof;
- b. Willfully denied meal periods or compensation in lieu thereof;
- c. Willfully denied accurately itemized wage statements; and
- d. Denied the timely payment of wages upon separation of her employment

B. Defendants

9. Defendant HOSKIN & MUIR, INC. is a California corporation. Defendant employed Plaintiff and Class Members throughout the State of California, including Alameda County, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
2 designated hereinafter as DOES when such identities become known.

3 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
4 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
5 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
6 attributable to the other Defendants.

7 12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
8 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
9 provisions of the California Labor Code as alleged herein.

10 **III.**

11 **CLASS ACTION ALLEGATIONS**

12 13. Plaintiff brings this action on behalf of herself and all others similarly situated as a
13 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
14 following class composed of and defined as follows:

15 **THE CLASS**

16 All persons who are or were employed by Defendant Hoskin & Muir,
17 Inc. as non-exempt hourly employees in the State of California at any
18 time from June 15, 2016 to March 25, 2021.

19 14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
20 modify this class description with greater specificity or further division into subclasses or limitation
21 to particular issues.

22 15. This action has been brought and may properly be maintained as a class action under
23 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
24 interest in the litigation and the proposed Class is easily ascertainable.

25 **A. Numerosity**

26 16. The potential members of the Class as defined are so numerous that joinder of all the
27 members the Class is impracticable. While the precise number of members of the Class has not been
28 ascertained at this time, Plaintiff is informed and believe, and based thereon allege, that Defendants

1 currently employ, and during the relevant time periods employed, 50 persons in the State of California
2 who fall within the Class definition.

3 17. Accounting for employee turnover during the relevant period necessarily increases this
4 number. Plaintiff alleges Defendants' employment records would provide information as to the
5 number and location of members of the Class. Joinder of members of the Class is not practicable.

6 **B. Commonality**

7 18. There are questions of law and fact common to the Class that predominate over any
8 questions affecting only individual Class Members. These common questions of law and fact include,
9 without limitation:

- 10 a. Whether Defendants failed to properly provide rest periods or compensation in
11 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7
12 and IWC Wage Order 4-2001;
- 13 b. Whether Defendants failed to properly provide meal periods or compensation
14 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
15 226.7, and 512, and IWC Wage Order 4-2001;
- 16 c. Whether Defendants failed to provide Plaintiff and Class Members with
17 accurately itemized wage statements, in accordance with Labor Code § 226(a)
18 and (e);
- 19 d. Whether Defendants failed to timely pay Plaintiff and Class Members all
20 wages due and owing at the separation of their employment, in violation of
21 Labor Code §§ 201-203; and
- 22 e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
23 to Business & Professions Code § 17200 *et seq.*

24 **C. Typicality**

25 19. The claims of the named Plaintiff are typical of the claims of members of the Class.
26 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
27 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
28 of law, and statutes as alleged herein.

D. Adequacy of Representation

20. Plaintiff will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

21. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

22. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)

23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set forth herein.

24. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code §§ 226.7 and IWC Wage Order 4-2001.

25. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiff and Class Members were routinely unable, and not authorized, to take a 10-minute rest break for every

1 four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay
2 for each missed rest break. When they are provided with a rest break, they are not permitted to leave
3 the work premises, resulting in impermissible on-duty rest periods. This violates Labor Code § 226.7
4 and IWC Wage Order 4-2001.

5 26. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the
6 payment of all rest period compensation which she and Class Members are owed for four years
7 preceding the filing of this Action, according to proof.

8 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

9 **V.**

10 **SECOND CAUSE OF ACTION**

11 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

12 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

13 **(LABOR CODE §§ 226.7, AND 512 AND IWC WAGE ORDER 4-2001)**

14 27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set
15 forth herein.

16 28. Plaintiff and Class Members are entitled to one hour of pay for each day that
17 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7,
18 512 and IWC Wage Order 4-2001.

19 29. Defendants failed to pay premium wages to Plaintiff and Class Members who were
20 denied meal periods, in violation of Labor Code §§ 226.7, 512 and IWC Wage Order 4-2001. Plaintiff
21 and Class Members were routinely denied, and not authorized to take, an uninterrupted, timely 30-
22 minute meal period for every shift worked exceeding five hours in duration, and a second,
23 uninterrupted, timely 30-minute meal period for every shift worked exceeding ten hours in duration,
24 but were not paid premium wages of one hour's pay for each missed meal period. When they were
25 able to take a meal period, they were oftentimes late, cut short, interrupted or on-duty, in violation of
26 Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001.

30. Pursuant to Labor Code §§ 226.7, 512 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all meal period compensation which she and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

(LABOR CODE §§ 226(a), (e))

31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

33. Defendants failed to issue Plaintiff and members of the Class wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As Plaintiff and Class Members were not paid with all premium meal and rest period wages due, as detailed above,

1 their wage statements failed to accurately set forth all gross wages earned, in violation of Labor Code
2 § 226(a)(1) and net wages earned, in violation of Labor Code § 226(a)(5).

3 34. As a consequence of Defendants' willful conduct in failing to provide Class Members
4 with accurate itemized wage statements, Plaintiff and members of the Class have been injured because
5 they have not been paid all wages due and were issued wage statements which do not reflect, and fail
6 to state, all information required by Labor Code § 226(a). The missing information cannot be
7 discerned at all from the face of the wage statements themselves. As a result, Plaintiff and Class
8 Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual
9 damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each
10 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and
11 are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

12 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

13 **VII.**

14 **FOURTH CAUSE OF ACTION**

15 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

16 **FAILURE TO TIMELY PAY WAGES DUE AT**

17 **SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**

18 35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set
19 forth herein.

20 36. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
21 due within 72 hours after resignation of employment or the day of termination of employment. Labor
22 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
23 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
24 or an action is commenced. The penalty cannot exceed 30 days of wages.

25 37. Plaintiff and certain Class Members were not paid all premium wages due during the
26 course of their employment and, as a result of this failure, they were not timely paid all wages due at
27 the separation of their employment. This violates Labor Code §§ 201-202.
28

39. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and certain Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

42. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

43. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

44. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor

standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

4. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

46. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of §17200 *et seq.* of the Business & Professions Code.

47. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise of reasonable care should have known that the conduct was unlawful. As such, it is a violation of § 17200 *et seq.* of the Business & Professions Code.

48. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

49. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the money Defendants have unlawfully failed to pay.

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IX.**SIXTH CAUSE OF ACTION**

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201-202, 226(a), 226.7, AND 512 AND PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

50. Plaintiff incorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. As a result of the acts alleged above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

52. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201-202, 226(a), 226.7, and 512

b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 226.3 and 558.

53. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

54. On April 3, 2020, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of April 3, 2020. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as described below.

\\

\\

X.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
3. For penalties pursuant to Labor Code §§ 203 for Plaintiff and Class Members who are no longer employed by Defendants;
4. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
5. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
6. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
7. Such other and further relief as this Court may deem just and proper.

Dated: June 1, 2021

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
SEPIDEH ARDESTANI
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: June 1, 2021

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
SEPIDEH ARDESTANI
Attorneys for Plaintiff