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Attorneys for Plaintiff and on behalf of the Proposed Class

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

JULIO MAYA HERNANDEZ,
individually, on a representative basis, and
on behalf of all others similarly situated;

Plaintiff,

vs.

ASTRO COMPANY, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendant.

Case No.: CIVDS2011280
*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

**DECLARATION OF BRIAN MANKIN IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL**

Hearing

Date: June 21, 2022
Time: 10:00 a.m.
Dept.: S26

Complaint filed: May 29, 2020

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. Within our firm, I am a partner and manage the employment practice. I represent Plaintiff Elizabeth Moreno in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled approximately 500 employee vs. employer litigation matters
7 during my 21 years in practice. Over the last 15 years, my practice has almost entirely consisted
8 of representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled approximately 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$200
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of 2018, my team and I held the record for the largest
17 known PAGA-only case in California’s history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino Superior
20 Court).

21 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
22 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
23 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
24 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
25 Plaintiff over \$6 million. Both cases were appealed.

26 6. Over the last few years, I have been consecutively selected by my peers as a
27 “Super Lawyer” in Employment Litigation.

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8. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel's application for a reasonable award of attorneys' fees not to exceed one-third of the Settlement Amount, Class Counsel's litigation expenses not to exceed \$15,000, settlement administrator costs not to exceed \$5,000, PAGA penalties of \$25,000 (of which \$18,750 or 75% will be paid to the LWDA and the remaining \$6,250 or 25% will be paid pro-rata to the Aggrieved Employees), and a Service Payment not to exceed \$7,500 for Plaintiff. After subtracting the agreed-upon deductions from the Gross Settlement Amount, it is estimated that \$180,833.34 will be available to the Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 350,000.00
Attorneys' Fees (1/3)	\$ 116,666.66
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 5,000
PAGA Penalties	\$ 25,000.00
Class Representative's Service Award	\$ 7,500
<i>Net Settlement Amount</i>	\$ 180,833.34

1 9. Assuming 240 Class Members, the average payment to each class member will be
2 approximately \$753.47 each (\$180,833.34 / 240). Of course, the actual payment will be
3 calculated on a pro-rata basis according to the number of Workweeks Worked by each Class
4 Member. Assuming an estimated 21,900 weeks worked, each Workweek will have a value of
5 approximately \$8.25/week on average. In addition, approximately 125 Aggrieved Employees
6 (*i.e.*, individuals who worked during the PAGA Period starting on May 29, 2019, will receive a
7 pro rata share of the \$6,250 PAGA Penalties (accounting for 25% of the total \$25,000
8 allocation). Moreover, the Aggrieved Employees collectively worked approximately 10,950
9 weeks during the PAGA Period.

10 10. Each Class Member will receive the Class Notice, explaining the nature of the
11 case, and the process for participating, objecting and opting-out, and advising of his/her estimated
12 settlement payment and the number of Work Weeks he/she is credited with working during the
13 Class and PAGA Periods (attached hereto as **Exhibit B**).

14 **PROCEDURAL BACKGROUND**

15 11. My office has performed considerable work and diligently investigated and
16 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
17 significant settlement fund for the benefit of the Class. We efficiently communicated and
18 exchanged information informally with Defense counsel which enabled the parties to
19 successfully settle the case at mediation. Because of the risks involved in litigating the case and
20 the contested legal and factual issues, I believe this settlement to be fair, reasonable, and
21 adequate.

22 12. After being retained by Plaintiff, we sent a May 13, 2020, letter to Defendant
23 requesting the production of his personnel file and timekeeping records in order to further
24 evaluate his wage and hour claims. That same day, we submitted a letter to the California Labor
25 Workforce Development Agency (the “LWDA”) for civil penalties under the Private Attorney
26 General Act of 2004 (the “PAGA”), which is attached hereto as **Exhibit C**.

27 13. Thereafter, Plaintiff filed a complaint that alleges class and PAGA claims,
28 including: (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3)

1 failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse for
2 business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized
3 wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code
4 §17200 *et seq.*, and (9) related claims under PAGA.

5 14. Defendant retained counsel and vehemently disputed the claims. However, prior
6 to taking depositions, conducting discovery, and filing a disputed motion for class certification,
7 the parties agreed to explore a resolution through mediation. In preparation for the mediation,
8 the Parties informally exchanged documents and information that allowed both sides to calculate
9 the potential damages and evaluate potential risk, including extensive policies and procedures
10 pertaining to each claim alleged, and statistics relating to the number of current and former
11 employees, number of shifts, pay periods and other things. In this regard, Defendant provided a
12 comprehensive sampling of timekeeping and payroll records of the Class Members. This robust
13 sampling enabled both parties to take a deep dive into the claims. Additionally, during this
14 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
15 including matters related to the calculation of damages, trial, and appellate issues and risks.

16 15. The Parties conducted an initial mediation on November 10, 2021, but it did not
17 result in a settlement. Thereafter, the Parties exchanged additional information and documents,
18 and returned for second session with the Hon. Jonathan Cannon (Ret.) on February 7, 2022.
19 Ultimately, Judge Cannon issued a mediator's proposal calling for a class-wide settlement for
20 \$350,000. The Parties accepted the mediator's proposal and memorialized the terms of the
21 settlement in a long-form Settlement Agreement. The Parties now seek the Court's preliminary
22 approval of the Settlement.

23 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL'S INVESTIGATION**

24 16. The putative Class in this case consists of approximately 240 similarly situated
25 individuals. Plaintiff alleged numerous wage and hour violations on behalf of the Class
26 Members, with a particular emphasis on following alleged violations.

27 17. First, Plaintiff alleged that Defendant issued wage statements to the Class that did
28 not comply with the requirements of Labor Code § 226. But Defendant disputed Plaintiff's wage

1 statement claim and specifically disputed that the wage statements were inaccurate or that they
2 otherwise failed to comply with Labor Code § 226. Furthermore, Defendant contended that,
3 even if Plaintiff could identify a technical error in some employees' wage statements, Plaintiff's
4 claims still fail for multiple reasons, including without limitation, because Plaintiff cannot
5 establish a "knowing and intentional" violation or that Plaintiff and other employees suffered an
6 "injury" as required by Labor Code § 226(e).

7 18. Second, Plaintiff also claimed that Defendant failed to pay proper wages due to
8 two distinct violations. *First*, Plaintiff alleges that Defendant paid some Class Members on an
9 hourly-plus-piece-rate basis but that, during such workweeks, Defendant only paid overtime at
10 1.5 times the base rate of pay. *Second*, Plaintiff claimed that many Class Members were only
11 compensated for 8 hours per day, regardless of how many hours were worked. Therefore,
12 Plaintiff argued that these violations resulted in unpaid minimum wages and overtime, as well as
13 waiting time penalties under Labor Code § 203 and other derivative penalties. However,
14 Defendant opposed each of these unpaid wage claims on the merits and as to the propriety of
15 class certification.

16 19. Third, Plaintiff also argued that the Class Members were often denied compliant
17 meal and rest breaks due to the nature of the work. However, Defendant argued that it provided
18 and made available meal and rest breaks to all employees, and any employee who did not take a
19 meal or rest break did so entirely of his or her own volition. In this regard, Defendant produced
20 its written policies and practices, which it argued show full compliance with the law. As such,
21 Defendant argued that these claims were without merit because, for each violation, a fact-finder
22 would have to determine why a break was noncompliant/nonexistent, because if it was by the
23 employee's choice, no liability attaches to the Defendant.

24 20. Despite that each of the claims were disputed, the Parties concluded that further
25 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
26 be fully and finally settled in order to limit further risk, expense and protracted litigation.

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1 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

2 21. The settlement was the product of extensive arm's length negotiations, facilitated
3 by an experienced mediator. Though cordial and professional, the settlement negotiations were
4 adversarial and non-collusive in nature. The settlement reached is the product of substantial
5 effort by the parties and their counsel. Although we believed that there was a possibility of
6 certifying the claims, we recognized the potential risk, expense, and complexity posed by
7 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
8 on the damages awarded, and/or on an appeal that can take several more years to litigate.

9 22. The settlement will result in a fair payment to each class member based on the
10 number of Weeks Worked by each Class Member. As set forth hereinabove, Plaintiff and his
11 counsel have diligently investigated the claims and defenses on behalf of the Class Members and
12 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
13 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
14 further litigation described above and weighing them against the benefits of a known
15 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
16 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
17 reasonable resolution of the claims alleged.

18 23. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
19 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
20 and investigation, making it possible to exercise informed judgment throughout the settlement
21 process, including significant document review (e.g. documents pertaining to Defendant's
22 policies and procedures, personnel documents, among others), and conducted an extensive
23 analysis of the detailed class-wide data provided by Defendant.

24 24. Based on my experience in other cases, including wage and hour matters, I
25 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
26 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
27 settlement at this time is in the best interests of the class. The settlement provides each class
28 member with compensation for the alleged violations when viewed in relation to the costs and

1 risks inherent in obtaining class certification and proceeding to trial.

2 25. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
3 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

4 26. Of course, the settlement amount represents a compromise figure, taking into
5 account the various risks surrounding class certification and the merits of Defendant's asserted
6 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
7 members, with no reversion to Defendant.

8 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENTS**

9 27. Plaintiff seeks an enhancement payment of \$7,500, which I believe is fair and
10 warranted given the time and effort he devoted to this case. His efforts included providing
11 factual background for the Class and PAGA complaint; providing documents and information
12 about Defendant's compensation plan; participating in phone calls to discuss litigation and
13 settlement strategy; making himself available throughout the litigation to assist with analyzing
14 the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
15 settlement documents. The Class Representative also assumed significant risk in bringing this
16 litigation—namely, had he lost, he could have been ordered to pay Defendant's costs.

17 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
18 **REQUESTED FEES AND COSTS**

19 28. As set forth above, I have handled over 250 class and representative actions, have
20 been appointed as class counsel and have successfully resolved over half of those class actions,
21 and many others remain pending and will successfully resolve in the future.

22 29. When this case was taken on a contingency fee basis, with my firm agreeing to
23 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
24 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
25 and mediation costs. There was never a guarantee that my firm would recoup those expenditures.

26 30. It is my experience that attorney fee awards of one-third of a common fund
27 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
28 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The

1 fee is further warranted because it is within the range of reasonableness typically awarded in
2 class actions. My firm's costs are reasonably capped at \$15,000 and will be based on the actual
3 amount of costs incurred at the time of final approval.

4 **SETTLEMENT ADMINISTRATOR**

5 31. The parties request that the Court appoint Phoenix Class Action Administration to
6 serve as the Settlement Administrator. Phoenix is experienced in administering class action
7 settlements, and has provided a flat-fee proposal to administer this settlement for \$5,000.

8 **CONCLUSION**

9 32. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
10 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit D**.

11 33. For the foregoing reasons, it is respectfully requested that the Court grant
12 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
13 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
14 payment to the Class Representative.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed on March 29, 2022, at Riverside, California.

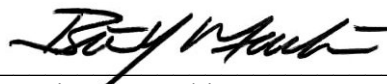
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18 By: 
19 Brian J. Mankin, Esq.
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EXHIBIT “A”

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Attorneys for Defendant, Astro Company, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JULIO MAYA HERNANDEZ, individually,
on a representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ASTRO COMPANY, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendant.

Case No.: CIVDS2011280
*[Assigned to Honorable David Cohn, Dept.
S26, for all purposes]*

**CLASS ACTION AND PRIVATE
ATTORNEY GENERAL ACT
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action and Private Attorney General Act (PAGA) Settlement Agreement and
2 Release of Claims is entered into by and between Plaintiff Julio Maya Hernandez, individually
3 and on behalf of all others similarly situated, and Defendant Astro Company, Inc., and is
4 approved by their respective counsel of record, subject to the terms and conditions hereof and the
5 Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Julio Maya*
8 *Hernandez v. Astro Company, Inc., et al.*, San Bernardino County Superior Court, Case No.
9 CIVDS2011280.

10 2. "Agreement," "Settlement Agreement" or "S.A." or shall mean this Class Action
11 and Private Attorney General Act Settlement Agreement and Release of Claims, including any
12 attached Exhibits.

13 3. "Aggrieved Employees" means all current and former nonexempt employees
14 employed by Defendant in California at any time during the PAGA Period.

15 4. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby Mankin
16 Lauby LLP.

17 5. "Class Data" means a complete list that Defendant will diligently and in good
18 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
19 and shall include the Settlement Class Members' full names; last known addresses; telephone
20 numbers; Social Security Numbers; the total Weeks Worked during the PAGA Period for each
21 Aggrieved Employee, and the total Weeks Worked during the Class Period for each Settlement
22 Class Member.

23 6. "Class Period" is deemed to be any time during the period of May 29, 2016
24 through the Preliminary Approval Date.

25 7. "Class Representative" or "Plaintiff" means and refers to Julio Maya Hernandez.

26 8. "Complaint" refers to the operative first amended complaint on file alleging class
27 and representative PAGA claims, filed in the San Bernardino County Superior Court on May 29,
28 2020, in the matter of *Julio Maya Hernandez v. Astro Company, Inc., et al., et al.*, San

Bernardino County Superior Court Case No. CIVDS2011280.

9. “Court” (or “Judge”) means the California Superior Court, County of San Bernardino.

10. “Defendant” means and refers to Astro Company, Inc.

11. “Defendant’s Counsel” or “Defense Counsel” means and refers to John Cone, Michael Pepek and Stephanie Stringer of Hall Griffin LLP.

12. “Effective Date” means the latest of the following dates: (i) if no Class Member objects, timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under Code of Civil Procedure § 663, then the date of the Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class Member objects, intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

13. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.

14. “Final Settlement Class” means, collectively, all Settlement Class Members who have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

15. “Individual Settlement Payment” shall have the meaning ascribed to it in Paragraph 47(c) below.

16. “Maximum Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(a) below.

17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b) below.

18. “Notice” means the notice of settlement of class action that will be sent to the Settlement Class Members.

1 19. “Notice Response Deadline” is 30 calendar days from the date the Notice is
2 mailed to the Settlement Class Members.

3 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
4 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant
5 to Paragraph 68(c) below.

6 21. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
7 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
8 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
9 as the individual PAGA payment allocated to each Aggrieved Employee.

10 22. “PAGA Period” is deemed to be any time during the period of May 29, 2019
11 through the Preliminary Approval Date.

12 23. “PAGA Released Claims” by the Aggrieved Employees upon Final Approval of
13 the Settlement will include means any and all PAGA claims that Plaintiff alleged against the
14 Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts
15 stated in Plaintiff’s Complaint and in Plaintiff’s LWDA notice letter, including all PAGA claims
16 seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay
17 overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
18 to reimburse business expenses, (f) failure to failure to timely pay wages each period and upon
19 separation of employment, (g) failure to provide accurate itemized wage statements, and (h) all
20 other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code
21 §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint. The time period governing
22 the PAGA Released Claims shall be any time during the PAGA Period. The PAGA Released
23 Claims do not release any Aggrieved Employee’s claims for wages or statutory penalties.

24 24. “Participating Class Member” means any and all Settlement Class Members who
25 are deemed to participate and receive an Individual Settlement Payment and do not opt-out by
26 submitting timely valid Requests for Exclusion.

27 25. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and
28 Defendant, collectively.

1 26. “Preliminary Approval Date” means the date the Court approves the Settlement
2 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

3 27. “Preliminary Approval Order” means the judicial Order to be entered by the
4 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
5 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
6 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
7 hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and
8 costs. Defendant will be provided with an opportunity to review and comment upon the motion
9 for preliminary approval at least five days before it is filed. Thereafter, Defendant will not object
10 to the motion.

11 28. “QSF” means the Qualified Settlement Fund set up by the Settlement
12 Administrator for the benefit of the Final Settlement Class, and from which the settlement
13 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
14 Code Sec. 468.

15 29. “Released Claims” by the Participating Class Members upon Final Approval of
16 the Settlement will include any and all claims stated in the Complaint and those based solely
17 upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay
18 overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
19 to reimburse business expenses, (f) failure to failure to timely pay wages each period and upon
20 separation of employment, (g) failure to provide accurate itemized wage statements, (i) unfair
21 and unlawful competition, and (j) all other claims for statutory penalties based on the facts or
22 claims alleged in the Complaint.

23 30. “Released Parties” means Defendant and their past and present officers, directors,
24 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
25 consultants, insurers and reinsurers, and their respective parent corporations, subsidiaries,
26 divisions, affiliates, attorneys, successors and assigns.

27 31. “Release Period” shall be the time period governing the Released Claims which
28 shall be the same as the Class Period.

1 32. “Release” shall mean the release and discharge of the Released Claims by
2 Plaintiff and all of the Participating Class Members. The *res judicata* effect of the Judgment will
3 be the same as that of the Release.

4 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a)
5 below.

6 34. “Service Payment” or “Service Award” means the amount approved by the Court
7 to be paid to the Class Representative, Julio Maya Hernandez, in addition to his Individual
8 Settlement Payment as a Participating Class Member.

9 35. “Settlement Administrator” means and refers to Phoenix Class Action
10 Administrators, the third-party class action settlement administrator agreed to by the Parties, that
11 will provide the Notice Packet to the Class Members and distribute the settlement amounts as
12 described in this Agreement.

13 36. “Settlement Administration Costs” means the costs payable from the Maximum
14 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
15 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
16 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
17 due diligence, reporting and remittance obligations, distributing the Maximum Settlement
18 Amount, and providing necessary reports and declarations, as requested by the Parties. The
19 Settlement Administration Costs shall be paid from the Settlement Amount, including, if
20 necessary, any such costs in excess of the amount represented by the Settlement Administrator as
21 being the maximum costs necessary to administer the Settlement.

22 37. “Settlement Class” consists of all current and former nonexempt employees
23 employed by Defendant in California at any time during the Class Period.

24 38. “Settlement Class Member” or “Class Member(s)” refers to individual members
25 of the Settlement Class.

26 39. “Work Weeks” or “Weeks Worked” for each Settlement Class Members means
27 any and all weeks during the Class Period in which the Settlement Class Member was employed
28 by Defendant and worked at least one shift during the week.

1 **B. General Terms**

2 40. Plaintiff filed a class and representative PAGA action complaint in the Court on
3 May 29, 2020 against Defendant and Does 1 through 20. The operative Complaint alleges class
4 and representative PAGA claims, including: (1) failure to pay minimum and regular wages, (2)
5 failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest
6 breaks, (5) failure to reimburse for business expenses, (6) failure to timely pay final wages, (7)
7 failure to provide accurate itemized wage statements, (8) unfair and unlawful competition
8 pursuant to Business and Professions Code §17200 *et seq.*, and (9) related claims under PAGA.

9 41. Defendant denies Plaintiff's claims and allegations and contends that the Action is
10 not suitable for class certification or manageable as a class or representative action.

11 42. The Class Representative believes he can proceed with his representative and
12 class claims, that the Action is meritorious, and that class certification is appropriate.

13 43. The Parties have conducted a thorough investigation into the facts of the Action.
14 This includes conducting an extensive exchange of informal discovery, including Defendant's
15 written policies and practices and the production of a sampling of payroll and timekeeping
16 records for Settlement Class Members. Class Counsel is both knowledgeable about and has done
17 extensive research with respect to the applicable law and potential defenses to the claims of the
18 Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members'
19 claims against Defendant. Based on the foregoing data and on their own independent
20 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant
21 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
22 and adequate and is in the best interest of the Class Members in light of all known facts and
23 circumstances, including the risk of significant delay and uncertainty associated with litigation,
24 various defenses asserted by Defendant, and numerous potential appellate issues.

25 44. On November 10, 2021, Plaintiff and Defendant participated in mediation before
26 the Hon. Jonathan Cannon (Ret.), a highly experienced wage and hour class action mediator. The
27 matter did not resolve. Therefore, the Parties exchanged further information and returned for a
28 second mediation on February 7, 2022, at which time the matter resolved pursuant to a

mediator's proposal from Judge Cannon.

45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

46. Stipulation for Class Certification. For settlement purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not submit a Request for Exclusion from the Settlement Class may be conditionally certified as a settlement class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement and resolving the administration of the Settlement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose class certification and the substantive merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and a trial should the Court decline to issue Final Approval.

C. Terms of Settlement

47. The financial terms of the Settlement are as follows:

(a) Maximum Settlement Amount: The Parties agree to settle this Action for Three Hundred and Fifty Thousand Dollars (\$350,000) ("the Maximum Settlement Amount"). The Maximum Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties. Defendant shall separately pay the employers' share of their payroll tax obligations, which shall be reported through the Settlement Administrator.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the

Maximum Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class Representative as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court reduces the attorneys' fees, litigation costs, Service Award, or Settlement Administrator Costs, the difference shall be placed in the Net Settlement Amount and allocated to the Settlement Class.

(c) Individual Settlement Payments for the Settlement Class: Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Work Weeks a Settlement Class Member worked during the Class Period. Specific calculations of Individual Settlement Payments will be made as follows:

- Defendant will calculate the total number of Work Weeks worked by each Settlement Class Member during the Class Period and the aggregate total number of Work Weeks worked by all Settlement Class Members during the Class Period.
- To determine each Settlement Class Member's estimated Individual Settlement Payment, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Work Weeks, resulting in the "Work Week Value." Each Settlement Class Member's Individual Settlement Payment will be calculated by multiplying his or her total number of Work Weeks during the Class Period by the Work Week Value.
- Individual Settlement Payments will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions.
- The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Work Weeks worked, so that the amount actually distributed to the

Settlement Class equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Settlement Payments: Since the primary claim in the action relates to statutory and civil penalties (for wage statement violations), the majority of the allocation will be for interest and penalties, rather than wages. To that end, the Individual Settlement Payments will be allocated based on the allegations in the Action as follows: 15% will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and the remaining 85% will be allocated between interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226, 2699) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$7,500, in exchange for the services Plaintiff performed on behalf of the Class and for entering into the general and expansive release discussed hereinafter. Defendant agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of the Maximum Settlement Amount. The Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(f) Attorneys' Fees and Costs Award: Defendant agree to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third of the Maximum Settlement Amount (\$116,666.66), plus reasonable litigation costs not to exceed \$15,000 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's

1 Fee and Cost Award shall be paid from the Maximum Settlement Amount, and except for this
2 award, Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to
3 Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel,
4 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
5 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
6 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
7 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
8 of attorneys' fees and costs awarded by the Court.

9 (g) Settlement Administration Costs: The fees and other charges of the
10 Settlement Administrator will be paid from the Maximum Settlement Amount, not to exceed
11 \$5,000 unless approved by all Parties and the Court.

12 (h) PAGA Penalties: The Parties agree that \$25,000 is allocated to PAGA
13 Penalties, and is to be paid from the Maximum Settlement Amount, subject to Court approval.
14 Of this amount, \$18,750 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
15 the Private Attorney General Act of 2004 ("PAGA") and \$6,250 (25%) will be paid to the
16 Aggrieved Employees on a Work Week basis, which will be treated entirely as civil penalties
17 and shall be reported as required on an IRS form 1099. Class Counsel shall give proper notice to
18 the LWDA of the Settlement.

19 (i) Tax Liability: Class Counsel and Defendant make no representations as to
20 the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the
21 Settlement Class Members are not relying on any statement or representation by Class Counsel
22 or Defendant in this regard. Plaintiff and Participating Class Members understand and agree that
23 they will be solely responsible for the payment of any taxes and penalties assessed on their
24 respective Settlement Amounts described herein. The amount of federal income tax withholding
25 will be based upon a flat withholding rate for supplemental wage payments in accordance with
26 Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
27 be made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
28 and/or Forms 1099 will be distributed at times and in the manner required by the Internal

Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes. Plaintiff and Participating Class Members understand and agree that they will be solely responsible for the payment of any taxes assessed on their respective payments described herein.

(j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, his OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF

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

3 48. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
4 Participating Class Members under this Agreement, as well as any other payments made
5 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
6 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
7 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
8 vacation plans, sick leave plans, PTO plans, ESOP plans, and any other benefit plan. The Parties
9 agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and are
10 not included toward any regular rate of pay calculation, or any benefit vesting or accrual
11 purpose.

12 49. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under
13 no circumstances will any portion of the Maximum Settlement Amount revert to Defendant.
14 Participating Class Members will not have to make a claim in order to receive an Individual
15 Settlement Payment. Distributions, in the form of Individual Settlement Payments, will be made
16 directly to each Participating Class Member. The Settlement Administrator shall be responsible
17 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
18 a result of a Participating Class Member not cashing an Individual Settlement Payment by the
19 check cashing deadline, as set forth herein.

20 50. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
21 adequate, and will so represent same to the Court.

22 **D. Release by Plaintiff, the Aggrieved Employees and the Settlement Class**

23 51. Upon entry of the Final Approval Order and Defendant’s funding of the
24 Settlement Amount, and except as to such rights or claims as may be created by this Settlement
25 Agreement, the Participating Class Members will forever completely release and discharge the
26 Released Parties from the Released Claims for the Release Period.

27 52. Upon entry of the Final Approval Order and Defendant’s funding of the
28 Settlement Amount, the State of California and Aggrieved Employees shall completely release

1 and discharge the Released Parties from the PAGA Released Claims for the PAGA Period.

2 53. Each Settlement Class Member will be deemed to have made the foregoing
3 Release as if by manually signing it.

4 54. Plaintiff and Defendant intend that the Settlement described in this Agreement
5 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
6 arbitration, demand, or other action of any kind, by each and all of the Participating Class
7 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
8 Released Claims. The Class Members shall be so notified in the Notice. This paragraph does not
9 apply to any Class Member who timely and validly opts out of the Settlement.

10 55. Class Representative, on behalf of himself and the Settlement Class,
11 acknowledges and agrees that the claims for unpaid wages and unreimbursed expenses in the
12 Action, and untimely payment of wages in the Action, are disputed, and that the payments set
13 forth herein constitute payment of all sums allegedly due to them. Class Representative, on
14 behalf of himself and the Settlement Class, acknowledges and agrees that California Labor Code
15 Section 206.5 are not applicable to the Parties hereto. Section 206.5 provides in pertinent part as
16 follows:

17 An employer shall not require the execution of any release of any claim or
18 right on account of wages due, or to become due, or made as an advance
19 on wages to be earned, unless payment of those wages has been made.

20 **E. Release by Class Representative**

21 56. Class Representative does hereby, for himself and for his respective spouses,
22 heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
23 conservators, guardians, personal representatives, and assigns forever and completely release and
24 discharge the Released Parties from any and all charges, complaints, claims, liabilities,
25 obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
26 rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties,
27 civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of
28 any nature whatsoever, from the beginning of time through the execution of this Stipulation,

whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendant or the remuneration for or termination of such employment (collectively, the "Class Representative's Claims").

57. Without limiting the generality of the foregoing, this general release by Class Representative includes all federal, state and local statutory claims, federal and state common law claims (including but not limited to those for contract, tort and equity), including without limitation the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code section 17200 et seq.), and the California Labor Code, except for the Individual Claims.

58. Class Representative agrees that there is a risk that any injury that he may have suffered by reason of the Released Parties' relationship with his might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Class Representative agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this Settlement Agreement no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Class Representative with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

59. Class Representative expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
THAT THE CREDITOR OR RELEASING PARTY DOES NOT

1 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
2 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
3 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
4 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
5 OR RELEASED PARTY.

6 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
7 full and complete release and discharge of all parties, Class Representative and Class Counsel
8 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
9 without limitation, all claims that Class Representative knew of, as well as all claims that he does
10 not know or suspect to exist in his favor against the Released Parties, or any of them, for the time
11 period from the beginning of time to the execution of this Settlement Agreement, and that this
12 Settlement Agreement contemplates the extinguishment of any such Class Representative's
13 claims. Notwithstanding the above, the general release by Class Representative shall not extend
14 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
15 that may not be released by law.

16 **F. Interim Stay of Proceedings**

17 60. Pending completion of all of the prerequisites necessary to effectuate this
18 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
19 except such as are necessary to effectuate the Settlement.

20 **G. Notice Process**

21 61. Appointment of Settlement Administrator. The Parties have agreed to the
22 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
23 including mailing the Notice, using standard devices to obtain forwarding addresses,
24 independently reviewing and verifying documentation associated with any claims or opt-out
25 requests, resolving any disputes regarding the calculation or application of the formula for
26 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
27 Participating Class Members, issuing W-2 and 1099 Tax Forms, unclaimed funds due diligence,
28 reporting and remittance obligations, and performing such other tasks as set forth herein or as the
Parties mutually agree or that the Court orders.

62. Disputes Regarding Settlement Administration. Any and all disputes relating to

1 administration of the Settlement by the Settlement Administrator (except for disputes regarding
2 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
3 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
4 the Court that all payments and obligations contemplated by this Settlement Agreement have
5 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
6 confer in good faith to resolve the dispute without the necessity of Court intervention. The
7 Settlement Administrator shall also be responsible for issuing to Plaintiff, Settlement Class
8 Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for
9 all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
10 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and
11 penalties to the appropriate government authorities.

12 63. Class Data. Within ten (10) days after entry of the Preliminary Approval Order,
13 Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
14 Administrator will run a check of the Class Members' addresses against those on file with the
15 U.S. Postal Service's National Change of Address List. The Class Data provided to the
16 Settlement Administrator will remain confidential, shall be used solely to administer the
17 Settlement, and will not be used or disclosed to anyone, except as required by applicable tax
18 authorities, pursuant to Defendant's express written consent, or by order of the Court. Although
19 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
20 Counsel from communicating with Class Member's regarding the Action and Settlement.

21 64. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
22 Administrator to the Settlement Class Members, by first class mail, in English, within ten (10)
23 calendar days following the Settlement Administrator's receipt of the Class Data. The
24 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
25 addresses of Settlement Class Members if any envelopes are returned.

26 65. Returned Notices. The Settlement Administrator will take steps to ensure that the
27 Notice is received by all Settlement Class Members, including utilization of the National Change
28 of Address Database maintained by the United States Postal Service to review the accuracy of

1 and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for
2 whom an updated address is located within ten (10) calendar days following both the Settlement
3 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
4 shall be identical to the original Notice, except that it shall notify the Class Member that the
5 exclusion (opt-out) request or objection must be returned by the later of the Notice Response
6 Deadline or fifteen (15) days after the remailing of the Notice.

7 66. Disputes Regarding Information on Notices. Class Members are deemed to
8 participate in the Settlement, unless they opt-out. The Notice will inform Class Members of
9 his/her estimated Individual Settlement Payment and the number of Weeks Worked during the
10 Class Period. Class Members may dispute their Weeks Worked if they feel they should be
11 credited with more Work Weeks than Defendant's records show by timely submitting evidence
12 to the Settlement Administrator. Defendant's records will be presumed determinative absent
13 reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the
14 evidence submitted by the Class Member and provide the evidence submitted to Class Counsel
15 and Defense Counsel who agree to meet and confer in good faith about the evidence to determine
16 the Class Member's actual number of Work Weeks and estimated Individual Settlement
17 Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the
18 dispute to the Settlement Administrator to render a final decision. Class Members will have until
19 the Notice Response Deadline to dispute Weeks Worked, object or opt out, unless extended by
20 the Court. In the event that the Settlement Administrator increases the number of Weeks
21 Worked for any Settlement Class Member, then the Settlement Administrator will recalculate the
22 Individual Settlement Payments; accordingly, in no event will Defendant be required to increase
23 the Maximum Settlement Amount.

24 67. Declaration of Due Diligence. The Settlement Administrator shall provide
25 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
26 a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

27 68. Settlement Class Members' Rights. Each Settlement Class Member will be fully
28 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or

1 request exclusion from the Settlement. All Parties, signatories and their counsel shall not
2 encourage opt-outs or objections to this Agreement. The Parties specifically agree not to solicit
3 opt-outs, directly or indirectly, through any means. The Notice will inform the Settlement Class
4 Members of the Court-established deadlines for filing objections or requesting exclusion from
5 the Settlement in accordance with the following guidelines:

6 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
7 Member, other than Plaintiff, may request to be excluded from the Settlement Class by
8 submitting a “Request for Exclusion” to the Settlement Administrator, postmarked on or before
9 the Notice Response Deadline. The Request for Exclusion should state:

10 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT
11 CLASS IN THE HERNANDEZ V. ASTRO COMPANY
12 LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE
13 EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
14 RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS
15 LAWSUIT.”

16 To be valid, any Request for Exclusion must include the full name, address, telephone
17 number, last four digits of the social security number or date of birth, and signature of the
18 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
19 mail to the Settlement Administrator at the specified address. Any such Request must be made
20 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
21 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
22 Any Settlement Class Member who timely requests exclusion in compliance with these
23 requirements: (i) will not have any rights under this Agreement, including the right to object,
24 appeal or comment on the Settlement; (ii) will not be entitled to receive any payments under this
25 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Aggrieved
26 Employee who requests timely exclusion will still be subject to the PAGA Released Claims to
27 the fullest extent permitted by law and receive a share of PAGA Penalties.

28 (b) Binding Effect on Final Settlement Class Members. Except for those

1 Settlement Class Members who exclude themselves in compliance with the procedures set forth
2 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
3 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
4 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
5 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
6 reasonableness, and adequacy of the Settlement.

7 (c) Objections to Settlement. Any Settlement Class Member, other than
8 Plaintiff, may object to the terms of this Agreement. To object, a Settlement Class Member shall
9 inform the Settlement Administrator, in writing, of his or her objection which must be
10 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
11 objection shall include the objecting Settlement Class Member's full name, address, telephone
12 number, and dates of employment with Defendant, the case name and number, the basis for the
13 objection, including any legal support and each specific reason in support of the objection, as
14 well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class
15 Member is represented by counsel, the name and address of his or her counsel. The Settlement
16 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
17 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
18 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
19 Participating Class Member who files an objection remains eligible to receive monetary
20 compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees,
21 costs, or expenses incurred by any Class Member and/or his or her counsel related to any
22 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
23 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
24 and properly intervening or filing a motion to vacate the judgment under Code of Civil
25 Procedure § 663.

26 (d) Failure to Object. Any Settlement Class Member who desires to object
27 but fails to timely submit a written objection or in person objection at the Final Approval
28 Hearing waives any right to object and will be foreclosed from making any objection to this

1 Settlement. Any Settlement Class Member who does not timely and properly become a party of
2 record by intervening or filing a motion to vacate the judgment waives any and all rights to
3 appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
4 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California
5 Code of Civil Procedure section 473, and extraordinary writs.

6 (e) Responses to Objections. Counsel for the Parties may file a response to
7 any objections submitted by objecting Settlement Class Members at least five (5) court days
8 before the date of the Final Approval Hearing.

9 (f) Settlement Class Members will have until the Notice Response Deadline
10 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
11 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
12 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
13 request of Class Counsel or Defense Counsel.

14 (g) Defective Submissions. If a Settlement Class Member's Request for
15 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
16 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
17 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
18 defective submission to advise the Settlement Class Member that his or her submission is
19 defective and that the defect must be cured to render the Request for Exclusion or objection
20 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
21 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
22 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
23 received by fax within that period, it will be deemed untimely.

24 69. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
25 the QSF of the Maximum Settlement Amount (including the employers' share of the payroll
26 taxes) ***on the later of*** November 21, 2022, or thirty (30) calendar days after the Effective Date.
27 Once Defendant have complied with its obligation set forth in this paragraph, it shall be deemed
28 to have satisfied all of the terms and conditions of this Agreement, shall be entitled to all the

1 protections afforded it under the Agreement, and shall have no further obligations under the
2 Agreement, regardless of what occurs with respect to the further administration of the
3 Settlement. The Settlement Administrator (and not Defendant) shall issue the applicable W-2s
4 and IRS Form 1099 reflecting all payments to the Class Members.

5 70. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
6 payment into the QSF, the Settlement Administrator will mail the Individual Settlement
7 Payments to the Participating Class Members and Aggrieved Employees, the payment to Class
8 Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class
9 Representative, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement
10 Administration Costs.

11 71. Deadline for Cashing Settlement Checks. Participating Class Members and
12 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
13 Administrator to cash their settlement checks. If any Participating Class Member and/or
14 Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-
15 payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the
16 California State Controller's Office in the name of the Class Member and/or Aggrieved
17 Employee. The release will be binding upon all Participating Class Members and Aggrieved
18 Employees who do not cash their checks within the 180-day period. In the event that any
19 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
20 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
21 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
22 Counsel of the results. If a new address is located by these means, the Administrator will have
23 ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class
24 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
25 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
26 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
27 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
28 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop

1 payment on such check. If the check in question has not been negotiated prior to the stop
2 payment order, the Settlement Administrator will issue a replacement check.

3 72. No person shall have any claim against Defendant (or their designees),
4 Defendant's Counsel, Plaintiff or Class Counsel based on mailings, distributions, payments or
5 reports made in accordance with or pursuant to this Agreement. This provision does not,
6 however, prevent a Party from seeking enforcement of this Agreement.

7 73. Without prejudice to any other remedies, the Settlement Administrator shall agree
8 to be responsible for any breach of its obligations (whether committed by the Settlement
9 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
10 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
11 and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

12 **H. Duties of the Parties Prior to the Court's Approval**

13 74. Promptly after execution of this Settlement Agreement, Plaintiff will move the
14 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
15 accomplishing the following:

16 (a) Scheduling the Final Approval Hearing on the issue of whether this
17 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
18 and a hearing on fees, costs and the Service Payment;

19 (b) Approving as to form and content the proposed Notice;

20 (c) Directing the mailing of the Notice by first class mail to the Settlement
21 Class Members;

22 (d) Preliminarily approving this Settlement; and

23 (e) Preliminarily certifying the class for purposes of this Settlement.

24 **I. Duties of the Parties Following Court's Final Approval**

25 75. In connection with the Final Approval Hearing provided for in this Settlement
26 Agreement, Class Counsel shall submit a proposed Final Approval Order:

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

1 (b) Approving Class Counsel's application for an award of attorneys' fees and
2 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
3 and the payment to the Settlement Administrator for costs of administering the settlement; and

4 (c) Entering judgment approving settlement, thereby permanently barring all
5 Settlement Class Members from prosecuting any Released Claims against any of the Released
6 Parties.

7 76. Final Judgment. Class Counsel shall provide the Settlement Administrator with a
8 copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator
9 shall post the Final Judgment to its website within three (3) business days of receipt.

10 **J. Voiding the Agreement**

11 77. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
12 have no further obligations under the Settlement, including any obligation by Defendant to pay
13 the Maximum Settlement Amount, or any amounts that otherwise would have been owed under
14 this Settlement.

15 78. If the Settlement is voided or fails for any reason, any costs incurred by the
16 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
17 specified in this Agreement.

18 **K. Other Terms**

19 79. Waiver. The waiver by one Party of any breach of this Agreement by another
20 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

21 80. Parties' Authority. The signatories hereto represent that they are fully authorized
22 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
23 hereof.

24 81. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
25 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
26 such documents and to take such other action as may reasonably be necessary to implement the
27 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
28 best efforts, including all efforts contemplated by this Settlement Agreement and any other

1 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
2 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
3 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
4 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
5 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
6 Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval
7 Motion for review at least three business days prior to the filing deadline.

8 82. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
9 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
10 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
11 cause of action or rights released and discharged by this Settlement Agreement.

12 83. No Admission. Defendant denies any and all liability to Plaintiff and/or any
13 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
14 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
15 compromise the matters at issue in the Complaint to avoid further substantial expense and the
16 inconvenience and distraction of protracted and burdensome litigation. Defendant has taken into
17 account the uncertainty and risks inherent in litigation, and without conceding any infirmity in
18 the defenses that it has asserted or could assert against Plaintiff, and has determined that it is
19 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and
20 conditions set forth in this Agreement.

21 84. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
22 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
23 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
24 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into
25 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
26 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
27 and it, along with all related documents such as the notices, and motions for preliminary and
28 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of

Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

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

To the Settlement Class:

Brian Mankin
brian@LMLfirm.com
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

John Cone
jccone@hallgriffin.com
Michael Pepek
mpepek@hallgriffin.com
Stephanie Stringer
sstringer@hallgriffin.com
Hall Griffin LLP
1851 East First Street, 10th Floor
Santa Ana, California 92705-4052
Tel: (714) 918-7000 | Fax: (714) 918-6996

86. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory

rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

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

89. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California.

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

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

92. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Class member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

93. Invalidity of Any Provision. Before declaring any provision of this Settlement

1 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
2 extent possible consistent with applicable precedents so as to define all provisions of this
3 Settlement Agreement valid and enforceable.

4 94. Counterparts. This Settlement Agreement may be executed in counterparts, and
5 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
6 deemed an original, and, when taken together with other signed counterparts, shall constitute one
7 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
8 Electronic signatures shall have the same force and effect as an original.

9 Dated: March 22, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

10 
11 Julio maya hernandez (Mar 22, 2022 10:40 PDT)

Julio Maya Hernandez

12 Dated: March 22, 2022

CLASS COUNSEL:

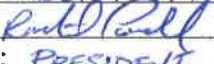
13 LAUBY MANKIN LAUBY LLP

14 
15 Brian Mankin
16 Attorneys for Plaintiff

17 Dated: ~~March~~ ^{APRIL} 4, 2022

DEFENDANT:

18 ASTRO COMPANY, INC.

19 ROBERT SANDOVAL
20 By: 
21 Title: PRESIDENT

22 April
23 Dated: ~~March~~ 4, 2022

DEFENDANT'S COUNSEL:

24 HALL GRIFFIN LLP

25 
26 John Cone
27 Attorneys for Defendant

28 END OF DOCUMENT



EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS ACTION

Julio Maya Hernandez v. Astro Company, Inc.
Superior Court of the State of California, County of San Bernardino
Case No. CIVDS2011280

To: all current and former non-exempt (hourly paid) employees of Defendant Astro Company, Inc., who worked in the State of California at any time between, May 29, 2016 and [REDACTED], 2022 (the “Class” or “Class Members”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2022 to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement you are estimated to receive approximately **\$INSERT AMOUNT** as your share of the Net Settlement Amount should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the Net Settlement Amount may be more or less than this estimate. Your estimate is based on the number of eligible weeks you worked at Astro Company in California between May 29, 2016 and [REDACTED], 2022 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement, you may “opt-out” of the settlement. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2022 (see Section V for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment, but you will preserve your right to pursue the Released Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement.
OBJECT	If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2022 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF WORK WEEKS	If you believe that your number of Work Weeks listed above is incorrect, you may contact the Settlement Administrator to dispute your Work Week calculation (see Section IV for more details on how to dispute your Work Weeks). You may provide evidence to the Settlement Administrator showing that your Work Week calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Hernandez v. Astro Company, Inc.*, San Bernardino County Superior Court Case No. CIVDS2011280 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Astro Company’s records show that you were employed in California as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between May 29, 2016 and [REDACTED], 2022 (“Class Period”).

The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Astro Company as a non-exempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On May 29, 2020, Plaintiff and Class Representative Julio Maya Hernandez, through his attorneys (“Class Counsel”), filed a class and representative action complaint against Astro Company for alleged wage and hour violations on behalf of all current and former non-exempt employees who were employed by Astro Company in California at any time since May 29, 2016. Plaintiff alleges that Astro Company violated various Labor Code sections by failing to pay wages for all hours worked, provide all required meal and rest breaks, reimburse for expenses, timely pay final wages, provide accurate and complete wage statements, and other related claims.

Astro Company has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Astro Company is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Astro Company has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Astro Company and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Astro Company, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Astro Company, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Astro Company will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her share will be paid to those who do participate.

III. Who are the Class Members’ attorneys?

Attorneys for the Class Members:

Brian Mankin, Esq.
brian@LMLfirm.com
Peter Carlson, Esq.
peter@LMLfirm.com
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by Astro Company in California at any time between May 29, 2016 and [REDACTED], 2022 (the "Settlement Class"). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, ("Participating Class Members") will be mailed Settlement checks and in exchange be bound by the Settlement and release of certain wage and penalty claims against Astro Company.

Without admitting any wrongdoing, Astro Company has agreed to pay \$350,000 (the "Maximum Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Maximum Settlement Amount:

Settlement Administration Costs. The Court has approved Phoenix Class Action Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$5,000 will be paid from the Maximum Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (PAGA) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$25,000 of the Maximum Settlement Amount will be allocated to Plaintiff's claim under the Private Attorneys General Act of 2004 ("PAGA"). Of this amount, \$18,250 will be paid to the California Labor Workforce Development Agency (LWDA) in satisfaction of the claims for penalties under PAGA, and the remaining \$6,750 will be divided between all Aggrieved Employees on a Workweek basis. Aggrieved Employees includes "all current and former non-exempt employees of Astro Company who worked in the State of California at any time during the period of May 29, 2019 through [REDACTED], 2022." Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$6,750 allocation:

Aggrieved Employee?	Weeks Worked as Aggrieved Employee?	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award Class Representative a Service Payment in the amount of \$7,500 to Julio Maya Hernandez to compensate him for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representative also may receive a share of the Settlement as a Class Member.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Maximum Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third (\$116,666.66) of the common fund Maximum Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$15,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Maximum Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$[REDACTED]. Compensable work weeks will be all Work Weeks that a Settlement Class Member worked in California during the Class Period. A Work Week includes any week in which a Class Member worked at least one shift/day during the week. To calculate each Individual Settlement Payment, the Settlement Administrator will divide the total Work Weeks of all Settlement Class Members into the Net Settlement Amount to determine a per "Work Week Value". The Workweek Value will be multiplied by the number of Work Weeks worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment, prior to legal deductions, for each Settlement Class Member. If any Settlement Class

Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out).

For each Settlement Class Member, the Weeks Worked at Astro Company during the Class Period will be calculated from Astro Company's records. Astro Company's records indicate that you worked for **[TOTAL WORK WEEKS]** Work Weeks in California during the Class Period of May 29, 2016, through [REDACTED], 2022. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2022, with documentation to establish the number of weeks you claim to have actually worked for Astro Company in California between May 29, 2016 and [REDACTED], 2022 (excluding any leaves of absence). **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. Participating Class Members will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member, so that the Participating Class Member can attempt to collect the funds at a later date.

Allocation and Taxes. 15% of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining 85% will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, it will be reported on IRS Form 1099 as income. Participating Class Members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Astro Company and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments. Participating Class Members will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments. Accordingly, Participating Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Court approves the proposed Settlement and enters Judgment, and Astro Company funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement, and will bar them from bringing certain claims against Astro Company. Specifically, the Participating Class Members will fully release and discharge the Defendants and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, of all claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to failure to timely pay wages each period and upon separation of employment, (g) failure to provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j) all other claims for statutory penalties based on the facts or claims alleged in the Complaint. These released claims and damages are hereinafter referred to as "Released Claims." The time period governing these Released Claims shall be at any time from May 29, 2016 and [REDACTED], 2022 ("Release Period").

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

"No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made."

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by the Defendant and the Defendant will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2022 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE HERNANDEZ v. ASTRO COMPANY LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2022. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any payments under this Settlement; and (3) will not be bound by this Settlement, or the Judgment.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object, you must submit a written objection stating your full name, address, telephone number, dates of employment at Astro Company, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection, and any legal support for each objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2022. Objections that do not include all required information, or that are not submitted timely, will not be considered. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2022, at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2022. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Astro Company in California while performing nursing duties at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representative on [REDACTED], 2022 at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

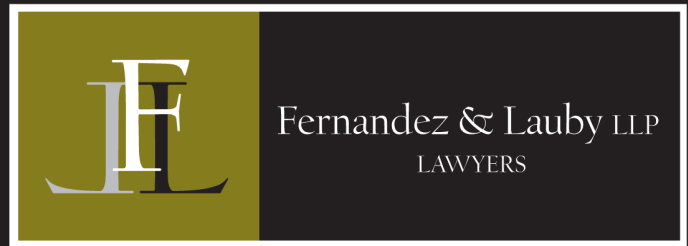
This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement (the Settlement Agreement) at Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion is [REDACTED], 2022. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2022. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “C”



March 13, 2020

Sent Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Please see attached Service List

**Re: PAGA Civil Penalty Claim of Julio Maya Hernandez v. Astro Company, Inc.,
Ronald Gish, Timothy White, Robert Sandoval, and Sandra Sanchez**

To the Labor and Workforce Development Agency, Astro Company, Inc., Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Julio Maya Hernandez (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Astro Company, Inc. and/or any affiliated entities, and/or the respective owner of said companies (Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez) (collectively the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s),

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2014 through December 2019. Claimant alleges that, at all relevant times, he and all other nonexempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding violations to Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Among other violations, the Company paid Claimant and the Aggrieved Employees for only a set number of hours worked per day, regardless of the actual hours worked, which resulted in unpaid minimum, overtime, and doubletime wages on each occasion.

Additionally, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week failed to pay proper overtime compensation for the hours worked in excess of 8 and/or 12 per day and/or 40 per week. Furthermore, at all relevant times, the Company paid

Claimant and the Aggrieved Employees on an hourly plus piece-rate basis. However, when Claimant and the Aggrieved Employees worked overtime hours and accrued earned overtime wages, the Company failed to include the piece-rate compensation in the calculations for the regular rate of pay and corresponding overtime wages owed.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Additionally, Claimant was often not permitted to leave the premises for his rest breaks, in violation of California law. Also, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break. Relatedly, the Company denied mandated *paid* rest breaks to Claimant and the Aggrieved Employees on the occasions when they worked over 10 hours in a day yet were only compensated for 8 hours – in other words, because they were not paid for these hours, they did not get *paid* rest breaks.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone and text message.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, and meal and rest period premiums. And the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Astro Company, Inc., Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Astro Company, Inc., Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Astro Company, Inc., Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez are an integrated enterprise and should be treated as a single employer because Astro Company, Inc., Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief Astro Company, Inc., Mr. Ronald Gish, Mr. Timothy White, Mr. Robert

Sandoval, and Ms. Sandra Sanchez share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez are now and at all relevant times were the owners of Astro Company, Inc., and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez had the authority, in the interest Astro Company, Inc., to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Astro Company, Inc., Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Astro Company, Inc., Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Astro Company, Inc., Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Astro Company, Inc. has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez have conducted their personal affairs. Adherence to the fiction of the separate existence of Astro Company, Inc. would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to Astro Company, Inc. should be imposed jointly and severally against Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Ronald Gish, Mr. Timothy White, Mr. Robert Sandoval, and Ms. Sandra Sanchez are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same).

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

Claimant and the Aggrieved Employees were not paid all minimum, regular wages, and/or overtime wages for time spent subject to the control of the Company, including instances of underpayment due to the failure to accurately record hours worked and outright failure to pay overtime wages. Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant

and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan to communicate with the Company via phone and text message. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802. Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to the failure to accurately state the total hours worked by the Aggrieved Employees each period. In addition, Defendant violated Labor Code § 226(a) due to the: failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; and failure to accurately state the corresponding number of hours worked at each hourly rate. Moreover, the Company’s wage statements violate Labor Code § 226 because they failed to state the start date of the pay period and failed to state the Company’s address (i.e., failure to state the name and address of the legal entity that is the employer). As a result of these violations, civil penalties may be assessed under Labor Code §§ 226.3 and/or 2699, and Claimant may recover attorneys’ fees and costs.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**
(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES
(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 256.) Labor Code § 2699 also imposes a penalty.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS
(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys’ fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

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ATTORNEYS' FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 256, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

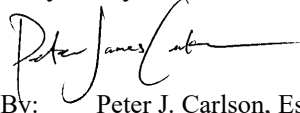
Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimant's notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



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EXHIBIT “D”