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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN DIEGO

16 HECTOR MARTIN, Individually and
on behalf of all similarly-situated
17 employees of Defendants in the State of
California,
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19 Plaintiffs,

20 v.

21 HERC RENTALS, INC and DOES 1
through 50, inclusive,
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23 Defendants.
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Case No.: 37-2020-00016112-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

IMAGED FILE

**DECLARATION OF BRIAN R SHORT IN
SUPPORT OF PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND
SEEKING LEAVE TO FILE SECOND
AMENDED COMPLAINT**

Date: May 12, 2023

Time: 8:30 a.m.

Judge: Hon. Ronald F. Frazier

Department: C-65

Date Complaint Filed: March 16, 2020

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3 I, Brian R. Short, state and declare:

4 1. I am an attorney at law licensed to practice before all courts of the State of
5 California. I am the managing shareholder of ShortLegal, APC in San Diego, California. I am
6 thoroughly familiar with and have personal knowledge of all of the facts set forth herein. If called
7 as a witness, I could and would competently testify thereto.

8 2. My law firm, ShortLegal, APC and my former Associate Dorota A. James are the
9 attorneys of record for Plaintiff Hector Martin ("Plaintiff") in the case *Hector Martin v. Herc*
10 *Rentals, Inc.*, San Diego County Superior Court, Case No.: 37-2020-00016112-CU-OE-CTL filed
11 March 16, 2020. I submit this declaration in support of Plaintiff Hector Martin's Unopposed
12 Motion for Preliminary Approval of Class Action Settlement which seeks primarily: (1) the
13 granting of preliminary approval of the proposed Settlement including the submission of a Second
14 Amended Complaint that will incorporate Plaintiff Erik Rudolph and his separately filed claims in
15 Los Angeles Superior Court Case No. 20STCV14715 against this Defendant and are similar in
16 nature to those asserted in this action; (2) the approval of the distribution of the Class Notice to the
17 Class; (3) the appointment of Brian Short of ShortLegal, APC and Crosner Legal as Class Counsel
18 for the claims asserted Second Amended Complaint, the appointment of Plaintiff Hector Martin
19 and Erik Rudolph as a Class Representatives, and Phoenix Settlement Administrator as Claims
20 Administrator; (4) and the setting of a hearing for final approval and class counsel's requested fees
21 and costs and Class Representative's service award request. The Stipulation of Class and PAGA
22 Action and Release of Claims ("Stipulation" or "Agreement") and the Proposed Notice to the class
23 are attached hereto as Exhibits 1 and 2, respectively.

24 CLASS COUNSEL'S CLASS ACTION EXPERIENCE

25 3. I have been a member of the State Bar of California since 2005. I am also admitted
26 to practice in various Districts of United States District Court. I have been practicing almost
27 exclusively in complex class action matters in state and federal courts since I began my legal
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3 practice in 2005. Since February 2009, I have spent almost my entire practice representing
4 employees in class and PAGA representative action wage and hour litigation. My primary practice
5 in complex class action litigation spans approximately 18 years.

6 4. During just the last 13 years, I have served as plaintiff's counsel of record in the
7 following wage/hour employment class action and PAGA action cases, where I was responsible for
8 the prosecution of said cases: Garcia v. J.C. Penney Corporation, Inc., Superior Court for the
9 County of San Diego (27,726 PAGA members); Weaver v. Hallmark Marketing Corporation,
10 United States District Court for the Central District of California (3,846 class members); Mahoney
11 v. AT&T Corp, Superior Court for the County of Los Angeles; Thomson v. LawInfo.com, Superior
12 Court for the County of San Diego; Vest v. Scher Tire, Inc., Superior Court for the County of
13 Riverside; Duarte v. Rainbow Disposal Co., Inc., Superior Court for the County of Orange; Julio v
14 L&M Tire Co., Inc., Superior Court for the County of San Diego; Lucarini v. Dresser, Inc., Superior
15 Court for the County of Los Angeles; Stevenson v. Falcon Critical Care Transport, Superior Court
16 for the County of Contra Costa; Iskandaryan v. Casual Male Retail Group, Inc., Superior Court for
17 the County of Los Angeles; Williams v. OneLegacy, Superior Court for the County of Los Angeles;
18 Corral v. Lifecare Solutions, Inc., et al., Superior Court for the County of Los Angeles; Huerta v.
19 Venture Petroleum Company, Inc., Superior Court for the County of San Diego; Frugard v. Unified
20 Protective Services, et al., Superior Court for the County of Los Angeles; Turnage v. Park
21 Management Corp. dba. Six Flags Discovery Kingdom, Superior Court for the County of Solano;
22 Clancy, et al. v. Scripps Health, Superior Court for the County of San Diego; Solaberrieta v. Baker
23 Hughes Oilfield Operations, Inc., et al., Superior Court for the County of Los Angeles; Gutierrez
24 v. L & M Tire Company, Inc., Superior Court for the County of San Diego; Stafford v. Dollar Tree
25 Stores, Inc., Eastern District of California; Stafford v. Dollar Tree Stores, Inc., Superior Court for
26 the County of Solano; Turnage v. Old Dominion Freightlines, Inc., Central District of California;
27 Green v. Lawrence Service Company, United States District Court for the Central District of
28 California; Radford v. ACD Direct, Superior Court for the County of San Diego; De La Rosa v.

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3 Quten Research Institute, LLC, Superior Court for the County of San Diego; Frayre v. UPS,
4 Superior Court for the County of San Diego; Leonard et al. v. ABTTC, Inc., Superior Court for the
5 County of Riverside; Loveless v. ASM Affiliates, Superior Court for the County of San Diego;
6 Alfaro v. KSC Studios dba OneKreate, LLC, Superior Court for the County of San Diego; Madriz
7 v. North County Ford, Inc., Superior Court for the County of San Diego; Troxel v. LA Leasing,
8 Inc., Superior Court for the County of San Diego, and Garcia v. WSI, et al, Superior Court for the
9 County of San Diego; and Enriquez v. Colt Services, Superior Court for the County of San Diego;
10 Virissimo v. L'Oreal USA Products, Inc. et al, Superior Court for the County of San Diego; Horton
11 v. Socket Payment Services, United States District Court for the Southern District of California;
12 Alfaro v. Ten Stories, Inc., Superior Court for the County of San Diego; Lemar v. Earthlite, LLC,
13 et al., Superior Court for the County of San Diego; Rodriguez v. Chimney Sweeps, Superior Court
14 for the County of San Diego; Burgueno v. Tayman Industries, Inc., Superior Court for the County
15 of San Diego; Rivera v. Octavian FM, LLC, Superior Court for the County of San Diego; Virissimo
16 v. L'Oreal USA Products, Inc. et al., Superior Court for the County of San Diego; Ruess v. Fun
17 Bike Center, Superior Court for the County of San Diego; Hitchko et al v. NPTI of Southern
18 California, et al., Superior Court for the County of San Diego; Dortch v. Southern California
19 Addiction Center, Superior Court for County of Orange; Fox v. Capital Growth Properties, Inc.;
20 Superior Court for the County of San Diego; Davis v. SoCal Interiors, Inc., Superior Court for the
21 County of San Diego; Hubbard v. L'Oreal USA Inc., Superior Court for the County of San
22 Francisco; Fox v. Capital Growth Properties, Inc.; Superior Court for the County of San Diego;
23 Burns v. Driveline Retail Merchandising Inc., Superior Court for the County of Sacramento; Guiher
24 v. Punch Bowl of San Diego, et al., Superior Court for the County of Sacramento; Flores v. New
25 Age Distribution, Inc., Superior Court for the County of Orange; Lara v. The Pep Boys Manny Moe
26 & Jack of California, Superior Court for the County of San Diego; Paul v. Hygeia, Superior Court
27 for the County of San Diego; Brewer v. Pyramid Enterprises, Inc., Superior Court for the County
28 of San Diego; Hoffman v. Crest Beverage, LLC, Superior Court for the County of San Diego; and

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3 Guzman-Lopez v. The American Bottling Company, et al., United State District Court, Central
4 District; and Garcia v. Respireonics, Superior Court for the County of San Diego.

5 5. My Associate Dorota A. James has a long history of experience litigating complex
6 wage and hour class actions. Ms. James is a sixth-year attorney who has extensive experience
7 dealing with complex wage and hour litigation. She received her Paralegal Certificate from the
8 USD Paralegal Program in 2007. Prior to that, she was trained at the Law School at the
9 University of Wroclaw, Poland where she graduated in 1994. Thereafter, Ms. James moved to
10 Germany where she first received her LL.M. degree and then earned her title of Doctor of the
11 Science of Law (S.J.D) at the University of Saarland (Germany). While completing her LL.M.
12 degree, Ms. James worked as a law assistant in a German attorney's office with the focus on a
13 civil and business litigation, including labor disputes. Ms. James completed the L.L.M. Program
14 in Comparative Law at the University of San Diego and became a licensed member of the
15 California State Bar in June 2016. Ms. James has significant experience and knowledge of
16 complex class actions against employers in wage and hour disputes. Before she joined my law
17 firm, Ms. James worked with myself as a senior litigation paralegal at another San Diego law firm
18 which specialized in representing plaintiffs in wage and hour employment litigation. During her
19 time spent at my current firm and the time she spent at our previous firm she provided all aspects
20 of litigation support pertaining to complex class action litigation from pre-filing research,
21 discovery, pre-mediation analysis through to post-settlement claims. She is actively assisting in
22 the litigation of each of the cases listed in paragraph 4, above. During her career as employment
23 law paralegal she assisted with and worked on more than 50 employment class action cases.

24 6. During just the last 4 years, my Associate Dorota A. James has served as plaintiffs'
25 counsel of record in the following wage/hour employment class action and PAGA action cases,
26 where she was responsible for the prosecution of said cases: Garcia v. J.C. Penney Corporation,
27 Inc., Superior Court for the County of San Diego; Fox v. Capital Growth Properties, Inc.; Superior
28 Court for the County of San Diego; Burns v. Driveline Retail Merchandising Inc., Superior Court

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3 of the County of Sacramento; Guhier v. Punch Bowl of San Diego, et al., Superior Court of the
4 County of Sacramento; Ruess v. Fun Bike Center, San Diego Superior Court of San Diego; Hitchko
5 et al v. NPTI of Southern California, et al., Superior Court for the County of San Diego; Dortch v.
6 Southern California Addiction Center, Superior Court for County of Orange; Davis v. SoCal
7 Interiors, Inc., Superior Court for the County of San Diego; Flores v. New Age Distribution, Inc.,
8 Superior Court for County of Orange; Rivera v. Octavian FM, LLC, Superior Court for the County
9 of San Diego; Lara v. The Pep Boys Manny Moe & Jack of California, Superior Court for the
10 County of San Diego; Paul v. Hygeia, Superior Court for the County of San Diego; Brewer v.
11 Pyramid Enterprises, Inc., Superior Court for the County of San Diego; Hoffman v. Crest Beverage,
12 LLC, Superior Court for the County of San Diego; and Guzman-Lopez v. The American Bottling
13 Company, et al., United State District Court, Central District.

14 7. I and my Associate Dorota A. James are currently serving as plaintiff's counsel of
15 record in the following wage/hour and employment class action and/or PAGA representative
16 action cases: Enriquez v. FedEx Office and Print Services, Inc., Superior Court for the County of
17 San Diego; Taalib-Din v. FedEx Office and Print Services, Inc., Superior Court for the County of
18 San Diego; Salcedo v. Jackson and Blanc; Superior Court for the County of San Diego; Superior
19 Court of for the County of San Diego; Fox v. Prime Asset Management, Inc., Superior Court of
20 for the County of San Diego; Albrecht v. Smooth and Elegant, L.P., Superior Court of for the
21 County of San Diego; and Patel v. Apex Recovery LLC, Superior Court for the County of San
22 Diego.

23 8. Ms. James and I have extensive experience litigating class actions, other complex
24 litigation and wage and hour claims, such as those asserted in this action. Our knowledge of the
25 applicable wage and hour laws is evidenced by our representation of employees in numerous
26 disputes in state and federal courts in California.

27 9. Ms. James and I are the attorneys of record for Plaintiff Hector Martin, who is a
28 former employee of Defendant Herc Rentals, Inc. ("Defendant" or "Herc"). Plaintiff was employed

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3 by Defendant as sales and operations coordinator from March 20, 2017 to February 5, 2020 when
4 he was terminated.

5 10. In or around February or early March 2020, Plaintiff contacted our law firm with
6 concerns arising out of his employment with Defendant. We immediately sent out a request for a
7 copy of Plaintiff's pay records, time records, and personnel file. Accordingly, based on the
8 information known at that time, on March 4, 2020 Plaintiff submitted the requisite notice letter to
9 the Labor Workforce and Development Agency. Subsequently, on March 16, 2020 my firm filed a
10 putative class action lawsuit on behalf of the Plaintiff and similarly-situated employees of
11 Defendant in the California Superior Court, County of San Diego, Case No.: is 37-2020-00016112-
12 CU-OE-CTL which was subsequently amended to include PAGA claims after the administrative
13 exhaustion period on July 9, 2020.

14 11. Prior to filing the complaint, my firm conducted a lengthy investigation into the
15 merits of Plaintiff's claims, Defendant's potential affirmative defenses, and the complex issues
16 pertaining to the claims asserted in the constantly changing environment of procedural and merits-
17 based issues surrounding the class and representative wage and hour actions. Plaintiff alleged that
18 Defendant failed to pay Plaintiff and other similarly-situated employees minimum, regular, and
19 overtime wages for all hours worked. Plaintiff was often compensated by additional objective
20 bonuses based on sales commissions and/or production and these moneys were not properly
21 calculated into the regular rate of pay for purposes of calculating overtime compensation. Plaintiff
22 further alleged that Defendant failed to reimburse Plaintiff and other similarly-situated employees
23 for employment related expenses, including but not limited to personal cell phone expenses.
24 Plaintiff also alleged that Defendant failed to provide and authorize complaint meal and rest
25 periods; pay timely wages; furnish accurate itemized wage statements, and maintain employment
26 records. Additionally, Plaintiff sought to recover damages, penalties, interest, disgorgement of
27 profits, injunctive relief and attorney's fees and costs.

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3 12. Defendant denied and continues to deny each of the claims and contentions alleged
4 by Plaintiff in the instant litigation.

5 13. Before commencing the civil action against Defendant, my firm thoroughly
6 analyzed employment related documents related to Defendant's policies and practices that were
7 maintained by Plaintiff.

8 14. During the litigation process, the parties agreed to exchange information and
9 documents informally and to participate in a private mediation.

10 15. In order to provide a complete analysis of the claims, defenses and potential
11 damages for mediation, Plaintiff's counsel requested and Defendant produced a statistically
12 significant number of time clock data and corresponding payroll data for putative class members in
13 several very large spreadsheets. In addition, Plaintiff provided a variety of information regarding
14 Defendant's policies and practices in place in his various job positions held throughout his
15 employment.

16 16. Prior to mediation, the parties engaged in several pre-mediation discussions in order
17 to understand and evaluate the merits and potential defenses which would be asserted at the
18 mediation. These additional pre-mediation discussions are not often utilized in class action cases,
19 but I believe that it significantly narrowed the scope and arguments which were presented at
20 mediation. Moreover, it permitted the parties to better analyze the claims asserted, defenses raised
21 and was a significant factor in the parties' ability to reach eventual resolution at mediation.

22 17. My firm meticulously scrutinized and analyzed the informal discovery documents
23 and records for accuracy and compliance with the California Labor Code. We also performed
24 comprehensive legal research based on each theory of recovery and the possible legal defenses
25 thereto. In addition, our firm performed a comprehensive class-wide damage study under each
26 theory of recovery to evaluate the extent of the class wage loss after receiving employee payroll
27 records. The damages included calculations of the estimated value for wage and hour violations,
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3 as well as the penalties and wage premiums for failure to provide meal and rest periods and the
4 amount of waiting time penalties and other penalties that would result from the above violations.

5 18. On July 23, 2021, the Parties engaged in a full-day mediation session with Louis
6 Marlin¹, who is a well-respected, neutral third-party mediator, well-versed and experienced in wage
7 and hour class actions and corresponding PAGA actions. During the mediation session, the Parties
8 engaged in a good-faith negotiations, exchanged additional information regarding the realistic
9 damage exposure to Defendant, discussed the strength and weaknesses of Plaintiffs' Martin's and
10 Rudolph's claims, the risks, costs, and delays of further litigation, the competing valuations of each
11 Plaintiffs' potential class-wide damages, and the difficulty in maintaining class certification of each
12 claims. In addition, a significant portion of the time at mediation was spent discussing Defendant's
13 unique defenses to the driver's claims asserted by Erik Rudolph due to recent law that was intended
14 to prevent disruptions to interstate commerce by injecting state-specific rules and regulations that
15 were at odds with existing federal law that would preempt state law on those issues. At all times,
16 the parties' negotiations were conducted at arm's length between attorneys with substantial wage
17 and hour class action experience. Mr. Marlin's role in mediating the case was very helpful with
18 respect to managing the parties' expectations and provided a useful and neutral analysis of the
19 issues and risks of all parties. At the end of the mediation, Mr. Marlin presented the parties with a
20 mediator's proposal. While the parties did not ultimately agree to this proposal at that time, over
21 the next several months the parties continued to work to reach a resolution and ultimately did reach
22 resolution at the mediator's suggested settlement proposal value. As a result of the discussions
23 during the mediation and further discussions lasting several months after the mediation ended, the
24 parties agreed to settlement that provided compensation to the two separate classes and also
25 distributed the net settlement funds in a manner that recognized that the Sales Subclass had several
26 claims that did not have the same defenses as the remainder of the class and that the damages related

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28 ¹ More information about Louis Marlin and his background may be found at
<https://marlinmediation.com/about/>

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3 to the Sales Subclass's specific claims were more valuable than the pro rata value of claims of the
4 remaining Class. As a result of this analysis, the Parties collectively agreed to a 3:2 multiplier for
5 the Sales Subclass that therefore compensated them at a reasonable ratio considering the potential
6 defenses and the calculated damages for these claims as well as the likelihood of the certification
7 of each of the subclass's claims.

8 19. Based on Plaintiff's Counsel's analysis of the documents and data and their
9 evaluation of this case in general, Plaintiff's Counsel is of the opinion that the class and PAGA
10 settlement is fair, reasonable, and adequate in light of all known facts and circumstances.

11 20. Defendant vehemently denied all of the Class Action allegations and that either
12 Plaintiff's action is appropriate for class treatment for any purpose other than setting the instant
13 litigation. Defendant contends, among other things, that it complied with the California Labor
14 Code, applicable Wage Orders and the California Business and Professions Code at all times. It
15 also claimed that federal motor carrier laws preempted California law with respect to the claims
16 asserted by the drivers in the Rudolph action.

17 21. Defendant maintained several arguments to counter Plaintiff's theories of liability.
18 Defendant claimed that the company paid the putative Class Members for all hours worked and that
19 it was unaware of any work being performed off-the-clock. Additionally, Defendant contended
20 Plaintiff and the putative Class Members had plenty of opportunities to take the required rest and
21 meal breaks and/or that any breaks were not received were due to shifts being too short to require
22 such breaks or that employees waived these breaks. Moreover Defendant produced meal period
23 waivers that they asserted would nullify any claim for wage premiums. Defendant consequently
24 discredited Plaintiff's meal and rest break claims.

25 22. With respect to Plaintiff's claim regarding Defendant's failure to pay overtime
26 and/or the proper regular rate of pay that included all compensation for hours worked, Defendant
27 argued that the Class Members were required to keep track of their hours work and that where any
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3 OT was present during periods where objective bonuses were paid had de minimus damages.
4 Therefore, Defendant did not give a lot of monetary value to this claim.

5 23. With respect to Labor Code Section 2802 violation, Defendant alleged that
6 employees were not required to maintain cell phones as part of their job duties and that any use of
7 such cell phones was made for the convenience of employees. Therefore, Defendant claimed
8 Plaintiff's estimated damages were inaccurate as they were based on the assumption that all
9 employees were required to use these cell phones as part of their job duties.

10 24. With respect to the imposition of waiting time penalties, Defendant contended that
11 the underpayment of wages affected a very small percentage of the Class Members who worked
12 off-the-clock, and therefore the waiting time penalties effected only a small fraction of former
13 employees who worked for Defendant. Therefore, Defendant did not give a lot of monetary value
14 to this claim.

15 25. In addition to the defenses on the merits, Plaintiff considered the Defendant's
16 position that PAGA penalties are discretionary in nature and that even if Plaintiff were successful
17 at trial, the Court has discretion to significantly decrease the amount of penalties damages awarded
18 in this action. In support of its argument, Defendant pointed to some recent California Superior
19 Court's Orders and the California Court of Appeal decisions confirming that it was within the
20 Court's discretion to significantly reduce PAGA penalties even when there is a finding that a
21 violation of the California Labor Code occurred. Defendant also argued that the heightened
22 penalties for "subsequent violations" under California's Private Attorney General Act (PAGA)
23 cannot be imposed since the Labor Commissioner had never issued a citation to constitute a
24 secondary violation.

25 26. Accordingly, Plaintiff considered the risks of receiving no recovery whatsoever,
26 and/or very lengthy litigation and appeals process, balanced by the exhaustive analysis and
27 investigation. Plaintiff has also taken into account the uncertain outcome and the risk of loss in any
28 litigation, especially in complex actions such as this litigation. These factors create additional

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3 complexity and therefore trial could potentially be complicated and arduous, and require the input
4 of multiple experts who are well-versed in industry-specific issues. Even though Plaintiff believes
5 that his case possesses substantial merit, the litigation cannot legitimately be characterized as being
6 without risk or that Plaintiff would inevitably prevail at trial or at the appeals process. Defendant
7 is represented by able counsel who have mounted a vigorous and knowledgeable defense on its
8 behalf.

9 27. The parties would have to undergo further extensive discovery motion practice
10 regarding documents and information related to class certification and the merits if the case did not
11 settle. There are significant risks to certifying the off-the-clock and meal period claims due to the
12 fact that the best evidence of these claims is the employees themselves and there is a lack of reliable
13 documentary evidence that supports these allegations. Even if class certification was achieved,
14 there could be potential motions for decertification of the class. The parties would file cross-
15 motions for summary judgment.

16 28. It was after months of preparation for mediation, an extended full-day of
17 negotiations and months-long post-mediation settlement discussions, reviews of calculations,
18 comparison of data and exchange of information that Plaintiff Martin and Plaintiff Rudolph agreed
19 to accept \$600,000 in settlement of all of the class and representative claims presented as part of a
20 tiered schedule based on the subclass each employee belonged to which reasonably represents a
21 fair assignment of value based on the claims and defenses to each respective group's claims asserted
22 in the complaint. Based on all of the circumstances, including the uncertain outcome and the risk
23 of the litigation, I believe that this is a fair and reasonable settlement value considering the highly
24 disputed nature of Plaintiff's claims. Our determination of a fair value of the settlement was based
25 on number of factors, including our investigation of the applicable law as it applied to the facts, the
26 suitability of the case for class treatment, Plaintiff's analysis of the provided financial documents,
27 plaintiff's valuation of the claims and the associated damages, as well as Defendant's potential
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3 defenses. In addition, Plaintiffs' took into account the ever changing landscape of class and PAGA
4 actions.

5 29. All of the Net Fund Value Amount, approximately \$330,000 before any residuals are
6 added in (the amount remaining from the Gross Fund Value Amount after deducting the requested
7 reasonable attorney's fees and litigation costs, reasonable Claims Administration Costs, reasonable
8 Service Award, and PAGA penalties) will be allocated among the participating Class Members.

9 30. In order to participate in the settlement, putative Class Members are not required to
10 affirmatively perform any duties. They are not required to submit a claim form and a check will
11 automatically be sent to their best available address in a timely manner after the address-verification
12 procedures are performed. The participating Class Members shall be paid their Individual
13 Settlement Amounts from the Net Settlement calculated based on the workweeks worked by the
14 Participating Class Member while he/she was employed by Defendant in California during the
15 Class Period. In other words, the settlement of each Class Member's claims for wage and hour
16 violations will accurately reflect the amount of time and effort each Class Member put into his or
17 her job.

18 31. Defendant has agreed to pay the Labor and Workforce Development Agency
19 (LWDA) a penalty payment of \$20,000 from the settlement proceeds. This equates \$15,000 (75%
20 of the total PAGA penalties) being made payable to the LWDA, and the remaining 25% distributed
21 amount the participating Class Members. We believe this is a fair and reasonable apportionment in
22 light of the fact that the assessment of civil penalties at trial has not been well-tested the actual
23 probability of recovery remains relatively speculative. This amount provides a reasonable
24 percentage in comparison to the fund available to the Class and allows for more wages to be
25 distributed to the affected employees.

26 32. Plaintiffs' firms will request attorney's fees of no more than one-third of the gross
27 settlement amount (\$200,000), and for reimbursement of the law firms' actual litigation costs up to
28 \$20,000. The amount requested is reasonable if evaluated pursuant to the percentage of common

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3 fund or lodestar methodology and further details of these analysis will be provided to the court in
4 conjunction with the filing of Plaintiff's fee application. At this point, the requested fees will
5 ultimately likely be a reduction in the total lodestar accrued by Plaintiff's counsel during the
6 litigation of this action and my firm is willing to undertake this reduction in order to accomplish
7 what I believe to be a reasonable and justified settlement under the circumstances of this action.

8 33. I believe that the maximum potential attorney's fees request is fair and reasonable
9 because of the real monetary results achieved for the class members in the face of the
10 knowledgeable defense attorney's in this action; the difficulties presented in these highly-technical
11 and novel issues resulting out Plaintiff's wage and hour claims brought; the wide-ranging
12 experience necessary to negotiate a settlement which contemplates claims that are in a constant
13 state of flux due to the changing landscape of wage and hour litigation. The attorneys and paralegal
14 staff at my firm record time worked and billed contemporaneously in increments of tenths of an
15 hour. Upon the submission of my firm's fee request, which will be submitted to be heard in
16 conjunction with the Motion for Final Approval, the request will be supported by a detailed
17 explanation of the qualifications of each timekeeper along with an explanation of the tasks
18 performed by my office during the litigation. The costs requests will also be supported at the time
19 of final approval with an explanation of the amount and nature of the costs incurred.

20 34. Plaintiff Hector Martin spent a great deal of time and made personal sacrifices to act
21 as Class Representative in furtherance of the litigation. Plaintiff contributed extensively during the
22 case, including working with counsel on the facts giving rise to the claims asserted in the complaint,
23 reviewing complaint, correspondence to LWDA, frequently communicating with counsel,
24 providing valuable factual resources, searching for and providing numerous documents, and
25 rearranging personal obligations in order to make himself available for the full-day mediation and
26 settlement negotiations. At all times, he acted to protect the best interests of the Class to achieve
27 the proposed settlement. Plaintiff was always available to respond to his Counsel's inquiries and
28 made significant time available as the date of mediation approached. He also assisted with

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3 evaluating the proposed settlement. This work was undertaken in order to achieve the proposed
4 settlement. A declaration detailing the extent of the named Plaintiff's work and hours worked for
5 the benefit of the class will be submitted in conjunction with the Motion for Final Approval.

6 35. Plaintiff Martin accepted a great deal of risk by bringing this action against Herc.
7 Plaintiff Martin understood that bringing this action may result or preclude or negatively affect his
8 ability to find employment with another company in the future due to the public nature of this
9 lawsuit against his employer. This is this age of social media and Google searching where a future
10 potential employer can readily search Plaintiff's name and may very easily forgo hiring Plaintiff
11 upon learning about this lawsuit against his employer for violation of the wage and hour California
12 Labor Code. For this precise reason, employees are very often intimidated and discouraged from
13 bringing actions against their current and former employers and are even more deterred from acting
14 as a Class Representative. Indeed, on several previous cases in my office, a simple Google search
15 of class representative names along with the term "class action" has yielded search results that place
16 their lawsuit at the top page of results and were therefore readily available to any potential future
17 employer. Plaintiff nevertheless had the courage to bring this action and placed the class interests
18 before his own to benefit all current and former employees of Defendant. Plaintiff's participation
19 as the Class Representative was an essential element that allowed my firm to settle the class claims.
20 I believe other Class Members would not have taken any action individually, and they would not
21 have received the compensation afforded by this Settlement but for Plaintiff's contribution.

22 36. In addition, Plaintiff has agreed to a much broader general release and §1542 waiver
23 which leaves him without recourse for known and unknown potential claims he may have against
24 Defendant now or in the future. This concession is significant and real. Considering these risks,
25 Plaintiff's selfless desire to see that all similarly situated employees are included in this recovery
26 is to be commended and should be recognized. I believe that the requested service award in the
27 total amount of \$7,500 for Plaintiff is fair and reasonable.
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3 37. Granting approval of the class action settlement would create a settlement fund that
4 would streamline this process and Class Members who participate in the settlement will receive
5 payments for their claims and other damages and penalties in the immediate future.

6 38. My Associate Dorota A. James and I are qualified to evaluate the class claims and
7 viability of defenses in this unpaid wage class action based on our combined experience in other
8 wage and hour cases. The recovery for each class member is reasonable, fair and adequate, and a
9 settlement at this time is in the best interests of the class. The settlement gives each class member
10 a fair amount of payment for waiting time penalties, overtime compensation, rest and meal periods,
11 and penalties.

12 39. I believe that the settlement of \$600,000 is an excellent result. It is fair, reasonable,
13 and in the parties' best interests, especially after balancing the proposed settlement terms against
14 the probable outcome of liability, the untested issues, the range of recovery at trial, and the
15 likelihood of collection of any recovery after trial, the prospect of an adverse ruling on summary
16 judgement and/or class certification, the difficulties of complex litigation, the lengthy process of
17 establishing specific damages; individual issues, and possible delays and appeals. This provides a
18 fair recovery to the class, the amount of which easily falls within the range of reasonableness. As
19 such, the evidence utilized to assess the magnitude of the class's potential damages, as well as the
20 sums proposed to be paid are reasonable and meet the criteria set forth in *Kullar v. Foot Locker*
21 *Retail, Inc.* (2008) 168 Cal.App.4th 116.

22 40. Defendant has agreed to accept electronic service of this filing in lieu of personal
23 service as though personally served on the date of filing.

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41. I intend to file this motion with the accompanying Settlement Agreement with the LWDA after submission to this Court in compliance with Labor Code Section 2699(l)(2)

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

Dated: April 20, 2023

ShortLegal, APC



By:

Brian R. Short, Esq.
Attorney for Plaintiff
Hector Martin

EXHIBIT A

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A. Definitions.

2. The “Actions” mean the cases entitled *Hector Martin v. Herc Rentals, Inc.*, filed as Case No. 37-2020-00016112-CU-OE-CTL in San Diego Superior Court (the “Martin Action”), and *Erik Rudolph v. Herc Rentals, Inc.*, filed as Case No. 20STCV14715 in Los Angeles Superior Court and removed to and pending in U.S. District Court, Central District of California, Case No. 2:20-cv-05412 ODW (the “Rudolph Action”).

4. The “Effective Date” of this Settlement is the date on which the Court enters an order granting final approval and entering judgment consistent therewith, as required by California Rules of Court, Rule 3.769. If objections to the settlement are filed and not subsequently withdrawn, the Effective Date of the Settlement is the sixty-fifth (65th) day after notice of the final approval order and judgment is mailed, unless an appeal is filed, in which case the Effective Date is the day after (a) the settlement is upheld by the Court of Appeals, or (b) all appeals are dismissed.

6. The “Settlement Class” shall be defined as “all current and former hourly paid or non-exempt employees who have worked for Defendant in California from March 19, 2018 through

1 February 24, 2022 (the “Class Period”). When the Parties mediated in July 2021, Defendant
2 represented that the Settlement Class included approximately 904 members who worked
3 approximately 99,741 pay periods.

4 7. Members of the Settlement Class shall collectively be referred to as a “Class
5 Member” or “Class Members.” Any Class Member who files a timely request for exclusion, as
6 detailed below, will be excluded from the final Settlement Class.

7 8. The “Sales Sub-Class” shall be defined as “all current and former hourly paid or
8 non-exempt employees who worked for Defendant as sales and/or operations coordinators or jobs
9 with similar titles at any time since March 19, 2018. When the Parties mediated in July 2021,
10 Defendant represented that the Sales Sub-Class includes approximately 199 members who worked
11 approximately 19,356 pay periods.

12 9. The “Releasing Parties” shall be defined as the Plaintiffs, the Aggrieved Employees,
13 and the Settlement Class and includes each employees’ spouses, heirs, executors, administrators,
14 trustees, and/or permitted assigns of each employee of the Settlement Class and Aggrieved
15 Employees.

16 **B. General.**

17 1. On March 4, 2020, Plaintiff Martin exhausted the pre-filing requirements of the
18 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

19 2. On or about March 16, 2020, Plaintiff Martin initiated the Martin Action by filing a
20 class action Complaint which was subsequently amended on or about July 9, 2020 to include
21 additional claims for PAGA on behalf of himself and all other aggrieved employees. As part of the
22 settlement approval process, Plaintiff Martin shall seek, with the good faith cooperation of Plaintiff
23 Rudolph and Defendant, to file a Second Amended Complaint which shall add Plaintiff Rudolph
24 as an additional class representative in the Martin action as well as incorporate the class and PAGA
25 definition and class and PAGA claims asserted in that action. The Parties shall cooperate thereafter
26 in good faith to accomplish a court-approved settlement of the Martin amended action which shall
27 release all claims in the Second Amended Complaint.
28

1 3. On November 21, 2019, Plaintiff Rudolph exhausted the pre-filing requirements of
2 the PAGA.

3 4. On or about April 15, 2020, Plaintiff Rudolph initiated the Rudolph Action by filing
4 a Complaint on behalf of himself and all similarly-situated employees of Defendant in the State of
5 California. Plaintiff filed a First Amended Complaint on March 3, 2021, and later filed his operative
6 Second Amended Complaint on September 21, 2021. As amended, Plaintiff Rudolph's Second
7 Amended Complaint asserts class action and PAGA representative claims against Defendant. In
8 the interest of avoiding duplicative litigation while this proposed settlement is seeking court
9 approval in the consolidated Martin action, Plaintiff and Defendants will cooperate in good faith
10 request a stay, including via formal motion if necessary, of the Rudolph Action and seek dismissal
11 following final approval of the consolidated actions.

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

25 6. The Class Representatives contend that Defendant violated the California Labor
26 Code and that this case is appropriate for class certification.

27 7. Class Counsel represent that they have conducted a thorough investigation into the
28 facts and law during the prosecution of this class action case, including the exchange of extensive

1 informal discovery and the review and verification of statistical data and other facts and information
2 provided by Defendant. Counsel for the Parties also represent that they have investigated the
3 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
4 potential defenses thereto, and the damages claimed by Plaintiffs.

5 8. On July 23, 2021, following their exchange of information regarding the claims and
6 defenses asserted by the Parties, counsel for the Parties engaged in a global mediation with Louis
7 Marlin. After mediation and further discussions and negotiations based upon the progress made at
8 mediation the Parties were able to reach the material terms of this Settlement.

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

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

24 **C. Terms of Settlement.**

25 1. The financial terms of the settlement are as follows:

26 (a) **Gross Settlement Amount:** The Parties agree to settle the Actions for a
27 Gross Settlement Amount of Six Hundred Thousand U.S. Dollars (\$600,000.00) (“the Gross
28 Settlement Amount”), to be paid if not reduced not later than thirty (30) calendar days after entry

1 of the final approval order and judgment. The Gross Settlement Amount includes the attorneys'
2 fees of Class Counsel, litigation costs and expenses (which includes, without limitation, all such
3 fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the
4 settlement, providing any notices required as part of the settlement, securing Court approval of the
5 settlement, and obtaining judgment in the Actions), the enhancement/general release payments to
6 each Class Representative, as approved by the Court, the payment to the LWDA pursuant to the
7 PAGA claims in the Actions, and all costs of administration, including, without limitation,
8 settlement administration fees and expenses. Defendant shall pay all employer payroll tax
9 obligations due on wage payments made from the Net Settlement Amount in addition to, and
10 separate and apart from, the Gross Settlement Amount.

11 (b) **Net Settlement Amount:** "Net Settlement Amount" is defined as the Gross
12 Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees and
13 documented litigation costs and expenses incurred or advanced by Class Counsel, the general
14 release payment to each Class Representative, the payment to the LWDA pursuant to PAGA, and
15 the costs of administering the settlement.

16 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment
17 Amount" means the portion of the Net Settlement Amount distributable to each Class Member who
18 participates in the Settlement (i.e., who does not submit a valid request for exclusion form). The
19 Individual Payment Amounts will be calculated as follows:

20 (i) The number of workweeks worked by the entire Class will
21 be determined based upon Defendant's records and utilized as the Total Class Workweeks for the
22 subsequent calculations.

23 (ii) The number of workweeks for the Sales Subclass shall be
24 determined based upon Defendants Records and the percentage of Sales Subclass Workweeks
25 compared to Total Class Workweeks shall be determined.

26 (iii) The Claims Administrator shall then utilize this information
27 to determine the appropriate amount of the Net Settlement Amount to be distributed to the entire
28 Class and Sales Subclass by calculating the amounts necessary to compensate the Sales Subclass
in a ratio of 3:2 compared to the non-Sales Subclass Members from the Net Settlement Amount.

(iv) The Claims Administrator shall then utilize the applicable
weekly rate ("Workweek Value") for each subclass to calculate the individual participating Class

1 Member's Payment Amount. The weekly rate shall be multiplied by the number of weeks each
2 individual participating Class Member worked in each subclass as a proportion of the total
3 subclass for Defendant in California during the Class Period to yield their Individual Payment
4 Amount. Each Participating Settlement Class Member who does not opt out will receive an
5 Individual Payment Amount equal to their individual weeks worked for Defendant in California
during the Class Period multiplied by the Workweek Value based upon the subclass to which they
belong.

6 (d) **Tax Treatment:** For tax purposes, each Individual Payment Amount will be
7 apportioned (a) 20% as unpaid wages (reported on an IRS Form W-2 and subject to applicable
8 withholdings); and (b) 80% as penalties and interest (apportioned 50% to each, and reported on an
9 IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be
10 subject to any applicable wage garnishments, liens, or other legally mandated treatment as required
11 by law.

12 (e) **PAGA Payments:** The Parties agree that Twenty Thousand Dollars
13 (\$20,000.00) shall be allocated to settle Plaintiffs' claims brought pursuant to PAGA. Of this
14 amount, Seventy-Five Percent (75%), or Fifteen Thousand Dollars (\$15,000.00) shall be paid to
15 the LWDA, and Twenty-Five Percent (25%), or Five Thousand Dollars (\$5,000.00) shall be paid
16 to the Aggrieved Employees on a pro-rata basis based on the number of work weeks that they
17 worked during the PAGA Period and that amounts will be the "PAGA Payment."

18 (f) **Enhancement Payment/General Release Payment to each Class**
19 **Representative:** The amount awarded to each Class Representative as an enhancement/general
20 release payment will be set by the Court in its discretion, not to exceed Seven Thousand Five
21 Hundred Dollars (\$7,500.00) each, totaling Fifteen Thousand Dollars (\$15,000.00). This amount
22 will be deducted from the Gross Settlement Amount. An IRS Form 1099 will be issued to each
23 Class Representative for their general release payment. Defendant agrees not to dispute or
24 otherwise object to the enhancement/general release payments if each Plaintiff requests \$7,500 or
25 less.

26 (g) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
27 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
28 the settlement award that has been made available for the Settlement Class by the efforts of Class

1 Counsel. The amount awarded shall not exceed one-third of the Gross Settlement Amount (i.e.,
2 \$200,000). The Court Approved Attorneys' fees shall be paid 60% to ShortLegal, APC and 40%
3 to Crosner Legal, P.C. An IRS Form 1099 will be issued to Class Counsel with respect to the award
4 of attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
5 requested by Class Counsel if such request is consistent with this paragraph.

6 Plaintiffs' Counsel may elect to have the Settlement Administrator, directly or indirectly,
7 disperse all or part of its attorneys' fees paid to either Plaintiffs' Counsel in periodic payments,
8 through a structured settlement. The electing Plaintiffs' Counsel will bear any and all costs, fees,
9 and expenses of administration for any periodic payments of such attorney's fees and shall be fully
10 responsible for any taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any
11 issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such
12 periodic payments, including, without limitation, any such issues, claims and/or disputes brought
13 by the state or federal government concerning the payment of taxes thereon. The Settlement
14 Administrator shall separately bill Plaintiffs' Counsel for any and all fees, costs, and expenses of
15 administration associated with any periodic payments of such attorneys' fees. Plaintiffs' Counsel
16 shall indemnify, defend, and hold Defendant harmless for any and all taxes, costs, liabilities,
17 attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of,
18 related to, or incurred in connection with any such periodic payments.

19 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
20 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
21 litigation costs and expenses, not to exceed Twenty Thousand Dollars (\$20,000.00). An IRS Form
22 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant
23 agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel
24 so long as the request does not exceed \$20,000.

25 (i) **Settlement Administration Costs:** The fees and other charges of the
26 Settlement Administrator to administer the Settlement are expected to total no more than Twenty
27 Thousand Dollars (\$20,000.00) and will be paid from the Gross Settlement Amount. These fees
28 shall include any costs associated with the required tax reporting on any Individual Payment

1 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the
2 Parties have agreed that Phoenix Settlement Administrators will serve as a neutral third-party
3 claims' administrator ("Settlement Administrator") to perform all acts related to providing notice
4 to the Settlement Class. Settlement Administrator shall be responsible for (a) printing and
5 distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class
6 Members; (b) administering the settlement; (c) processing exclusions and objections; (d) resolving
7 disputes; (e) distributing the Gross Settlement Amount as directed by the Court and as set forth
8 herein; (f) tax reporting; (g) providing necessary weekly status reports; (h) establishing a QSF; and
9 (i) other duties and responsibilities set forth herein and as customarily performed in the context of
10 class and PAGA action settlement in California state court.

11 (j) **Alteration by Court Decision:** Notwithstanding any other provision of this
12 Agreement, if the Court should fail to award the full amount of any sought deduction for attorney's
13 fees, costs or class representative enhancements from the GSA these amounts shall not revert to the
14 Defendant and will become part of the Net Settlement Amount. However, any other modification
15 of material terms of this Agreement shall give either party the right, but not the obligation for
16 cancellation or termination of the Settlement Agreement or grounds for limiting any other provision
17 herein. However, in the event that the Court shall deny approval of this Agreement and/or attempt
18 to modify its material terms other than the Attorney's Fees, Costs or Class Representative
19 Enhancements, the parties shall cooperate in good faith to address these concerns and resubmit the
20 Agreement for approval consistent with the original intent of the material terms of the agreement
21 between the parties. It is agreed that no order of the Court, including any order concerning
22 attorneys' fees, may alter or otherwise increase the Maximum Settlement Amount.

23 (k) **No Warranty by Defendant:** Plaintiffs understand and agree that
24 Defendant is not providing Plaintiffs or Class Members with tax or legal advice and that Defendant
25 makes no representations regarding tax obligations or consequences, if any, related to this
26 Settlement Agreement.

1 **D. Release of Claims.**

2 1. Upon the Effective Date, and subject to Defendant’s full payment of the Gross
3 Settlement Amount, Plaintiffs and all Settlement Class members who do not timely opt-out will
4 be deemed to have fully released and discharged Defendant, and any of its related companies,
5 assigns, current and former employees, insurers and attorneys (“Released Parties”) from any and
6 all Released Claims which arose during their employment in a non-exempt position in California
7 during the Class Period. “Released Claims” are all claims asserted in the Actions or any other
8 claims that could have been asserted in the Actions based on the facts alleged, including but not
9 limited to: unpaid wages (including overtime and commissions), regular rate of pay claims for
10 overtime and wage premiums, failure to provide meal periods or provide premium pay for missed
11 meal periods, failure to provide rest periods or provide premium pay for missed rest periods, failure
12 to indemnify or reimburse for business expenses, waiting time penalties, wage statement
13 violations, unfair business practice claims premised on the above claims, and PAGA claims
14 premised on the above claims.

15 2. Upon the Effective Date, and subject to Defendant’s full payment of the Gross
16 Settlement Amount, Releasing Parties do and shall be deemed to have fully, finally, and forever
17 released, settled, compromised, relinquished, and discharged, to the fullest extent possible, any
18 and all of the Released Parties of and from any and all PAGA Released Claims that accrued during
19 the PAGA Period. “PAGA Released Claims” are PAGA claims premised on the Released Claims.
20 The Aggrieved Employees will have no option to opt out of the PAGA Released Claims.

21 3. Plaintiffs and Defendant expressly agree that the Released Claims do not include
22 the claims asserted by Plaintiff Erik Rudolph in his pending action against Defendant for, inter
23 alia, wrongful termination and disability discrimination in violation of the California Fair
24 Employment and Housing Act, and any claims that could be asserted based on the facts alleged in
25 the operative Complaint, originally filed in Sacramento Superior Court on October 8, 2021, Case
26 No. 34-2021-00309513, and currently being heard before the United States District Court for the
27 Eastern District of California, Case No. 2:21-cv-02304-KJM-KJN, removed from California
28 Superior Court on December 14, 2021.

1 4. Except as provided herein, , Plaintiffs (on behalf of themselves and their spouse,
2 heirs, executors, administrators, trustees, and/or permitted assigns) also agrees to a general release
3 of any and all claims against Defendant and the Released Parties—which shall include without
4 limitation any and all claims which in any way relate to his employment with Defendant, under
5 State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the
6 Complaint or not, including but not limited to any claims under the FLSA, Title VII, ADA, FEHA,
7 ADEA, PAGA, California Labor Code, or any Industrial Welfare Commission Wage Order—now
8 existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence
9 from the beginning of time to the date of execution hereof. Plaintiff further expressly waives and
10 relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of Section
11 1542 of the California Civil Code, which provides: “**A general release does not extend to claims**
12 **that the creditor or releasing party does not know or suspect to exist in his or her favor at**
13 **the time of executing the release and that, if known by him or her, would have materially**
14 **affected his or her settlement with the debtor or released party.”**

15 **E. Notice and Exclusion Process.**

16 Within seven (7) calendar days after entry of the order granting preliminary approval of this
17 Settlement, Defendant shall provide to the Settlement Administrator a list of all Class Members,
18 including their last known addresses, telephone numbers, social security numbers, work weeks
19 worked during the Class Period, work weeks worked during the PAGA Period, and identification
20 of those in the Sales Sub-Class (“Settlement Class Information”). The names, addresses, telephone
21 numbers, and Social Security numbers will only be disclosed to the Settlement Administrator and
22 not to Plaintiffs’ Counsel. All information provided to the Settlement Administrator will be marked
23 CONFIDENTIAL. This information shall be kept confidential and shall not be disclosed, either in
24 writing or orally, by the Settlement Administrator to Plaintiff’s counsel unless approved by
25 Defendant. The Settlement Administrator shall use due care with respect to the storage, custody,
26 use, and/or dissemination of the confidential information. Such information must be stored in a
27 secure fashion and all persons who access the data must agree to keep it confidential.
28

1 1. A notice of pendency of class action, proposed settlement and hearing date for
2 Court approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the
3 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
4 within fourteen (14) calendar days after entry of the order granting preliminary approval. Attached
5 to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the
6 form attached hereto as Exhibit 2.

7 2. The Settlement Administrator will make reasonable efforts to ensure that the Class
8 Notice and Request for Exclusion Form are sent to all Class Members including an address check
9 with the U.S. Postal Service NCOA database prior to the initial distribution of the Notice Packets.
10 It will conclusively be presumed that if an envelope has not been returned within thirty (30) days
11 of the mailing that the Class Member received the Class Notice. In the event of returned or non-
12 deliverable notices, the Settlement Administrator will make reasonable efforts to locate Class
13 Members and re-send the notices.

14 3. Each Class Member will be fully advised of the settlement, the ability to object to
15 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
16 inform the Class Members of the Court-established deadlines for filing objections and a Request
17 for Exclusion Form.

18 4. Each Class Notice will contain personalized information setting forth the number
19 of work weeks each Class Member worked for Defendant in California during the Class Period,
20 their estimated Individual Payment Amount, the number of work weeks each Aggrieved
21 Employees worked during the PAGA Period, and the estimated PAGA Payment. To the extent a
22 Class Member disputes any of the information listed on his or her Class Notice, the Class Member
23 may produce evidence to the Settlement Administrator showing such information the Class
24 Member contends should be reflected in the Class Notice. Defendant's records will be presumed
25 determinative, however, and the Settlement Administrator's decision on these matters will be final.
26 The Class Notice will also set forth IRS W-9 information if required.
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1 5. All Class Members who do not submit a Request for Exclusion Form will be
2 eligible to receive an Individual Payment Amount, which shall be mailed to them if and when the
3 Effective Date occurs.

4 6. In order to elect not to participate in the Settlement, a Class Member must mail a
5 Request for Exclusion Form to the Settlement Administrator no later than forty-five (45) calendar
6 days after the initial mailing of the Class Notice and Request for Exclusion Form to Class
7 Members, unless the Court requires a longer period, in which case the Court ordered exclusion
8 period will apply. The date of the postmark shall be deemed the date of submission. The timeliness
9 of submitted Request for Exclusion Forms will be determined by valid postmark. If the 45th day
10 falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day
11 on which the U.S. Postal Service is open. No Aggrieved Employee may opt out of the PAGA
12 Payment.

13 7. The deadline for submission of Exclusion Forms shall be extended once by 30 days
14 for those Class Members whose Class Notice and Exclusion Form are returned as “undeliverable.”
15 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
16 on which the U.S. Postal Service is open.

17 8. The Settlement Administrator will search for additional addresses on returned mail
18 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15
19 days of receipt of the returned mail. The 30-day extended time limit will run from the date of the
20 second mailing for those Class Members. To the extent a Class Notice from the initial mailing is
21 not returned within 30 days, it shall be deemed to have been sent to a valid address even if it is
22 thereafter returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be
23 used to locate Class Members. If the initial Class Notice and Request for Exclusion Form is
24 returned, the Settlement Administrator will search using the social security number for a more
25 current address. If no address is found within 10 days, no further action is required.

26 9. The Settlement Administrator will notify the Parties of the total number of valid
27 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
28

1 Request for Exclusion Forms fifty-five (55) days following the initial mailing of the Class Notice
2 and Request for Exclusion Forms to Class Members.

3 10. In order to object to the settlement, a Class Member must mail his or her objection
4 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
5 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
6 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
7 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
8 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
9 extended for any reason.

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

17 12. Defendant shall deposit the Gross Settlement Amount as provided for in paragraph
18 C(1)(a) above into the Qualified Settlement Fund established by the Settlement Administrator no
19 later than thirty (30) calendar days after entry of the final approval order and judgment.

20 13. The Settlement Administrator shall disburse the Gross Settlement Amount within
21 fifteen (15) calendar days after its deposit by Defendant, subject to the prior occurrence of the
22 Effective Date. Class Members must cash each of their Individual Payment Amount checks within
23 one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The
24 value of any checks uncashed more than one hundred eighty (180) days after mailing shall be paid
25 to the State of California State Controller's Office- Unclaimed Property Fund, to be held in the
26 name of the respective Class Member.

1 **F. Duties of the Parties Prior to Court Approval.**

2 1. Promptly after execution of this Settlement Agreement, Plaintiffs will seek leave
3 to file an amended Complaint in the Martin Action via stipulation or noticed motion to add
4 Rudolph as an additional Plaintiff and to include Rudolph's claims;

5 2. In conjunction with the application for this amendment or following the formal
6 amendment to the complaint to add Rudolph to the Martin Action, move the Court for preliminary
7 approval of this settlement and entry of an order accomplishing the following:

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

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

11 (c) approving as to form and content the proposed Request for Exclusion
12 Form;

13 (d) preliminarily certifying the Settlement Class for purposes of settlement;

14 (e) preliminarily approving the PAGA penalties of \$15,000 to the LWDA;

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

16 (g) preliminarily setting the enhancement/general release payment payable to
17 each Class Representative;

18 (h) preliminarily approving Phoenix Settlement Administrators as the
19 Settlement Administrator and its estimated fees and costs not to exceed \$20,000.

20 3. Plaintiffs and Defendant will take such measures as necessary to avoid the
21 concurrent and duplicate litigation of the *Rudolph* class action, United States District Court,
22 Western Division, Case No. 2:20-cv-05412-ODW-E, while the Parties seek Court approval of this
23 Settlement.

24 4. The Parties shall submit this Settlement Agreement to the Court and the LWDA in
25 support of Plaintiffs' unopposed motion for preliminary approval of the settlement.

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

27 1. In connection with the hearing on final approval of the settlement provided for in
28 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)

1 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
2 by the Court):

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

5 (b) approving Class Counsel's application for an award of attorneys' fees and
6 reimbursement of documented litigation costs and expenses, the enhancement/general release
7 payment to each Class Representative, the payment to the LWDA, and the costs of administering
8 the settlement; and

9 (c) Entering judgment in the Martin Action, in accordance with this
10 Stipulation, pursuant to Cal. Rules of Court, Rule 3.769(h), and dismissing the Rudolph Action
11 with prejudice.

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

15 **H. Miscellaneous Provisions:**

16 1. **Voiding the Agreement.**

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

21 2. **Parties' Authority.**

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

24 3. **Mutual Full Cooperation.**

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

1 by this Settlement Agreement and any other efforts that may become necessary by order of the
2 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon
3 as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance
4 and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's
5 preliminary and final approval of the settlement.

6 **4. No Prior Assignments.**

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

11 **5. No Admission.**

12 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
13 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
14 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
15 Settlement Agreement with the intention of avoiding further disputes and litigation with the
16 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
17 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
18 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
19 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

20 **6. Notices.**

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

25 **To Plaintiffs and the Settlement Class:**

26 Brian R. Short, Esq.
27 Dorota A. James, Esq.
28 SHORTLEGAL, APC
 350 10th Avenue, Suite 1000
 San Diego, CA 92101

1
2 And

3 Blake Jones. Esq.
4 Zach Crosner, Esq.
5 Crosner Legal, P.C.
9440 Santa Monica Blvd., Suite 301 Beverly Hills, CA 90210

6 **To Defendant:**
7 Tim Johnson, Esq.
8 Cameron Flynn, Esq.
9 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4370 La Jolla Village Dr, Suite 990
San Diego, CA 92122

10 7. **Construction.**

11 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
12 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
13 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
14 any Party or their respective counsel participated in the drafting of this Settlement Agreement.

15 8. **Captions and Interpretations.**

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

20 9. **Modification.**

21 This Settlement Agreement may not be changed, altered, or modified, except in writing and
22 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
23 discharged except by performance in accordance with its terms or by a writing signed by each of
24 the Parties hereto on their attorneys.

25 10. **Integration Clause.**

26 This Settlement Agreement contains the entire agreement between the Parties relating to
27 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
28

1 understandings, representations, and statements, whether oral or written and whether by a Party or
2 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

3 **11. Binding on Assigns.**

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

6 **12. Governing Law.**

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

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

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

16 **14. Counterparts.**

17 This Settlement Agreement may be executed in counterparts, and when each Party has
18 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
19 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
20 Agreement, which shall be binding upon and effective as to all Parties.

21 **15. Confidentiality**

22 Until Plaintiffs file their motion for preliminary approval of the class action settlement, the
23 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
24 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
25 agencies, or as otherwise required by law.

26 **16. No Publicity**

27 Plaintiffs and their respective Counsel will not contact the media about the settlement or
28 respond to any inquiries by the media regarding the Settlement, other than to state that the matter

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A. Definitions.

2. The “Actions” mean the cases entitled *Hector Martin v. Herc Rentals, Inc.*, filed as Case No. 37-2020-00016112-CU-OE-CTL in San Diego Superior Court (the “Martin Action”), and *Erik Rudolph v. Herc Rentals, Inc.*, filed as Case No. 20STCV14715 in Los Angeles Superior Court and removed to and pending in U.S. District Court, Central District of California, Case No. 2:20-cv-05412 ODW (the “Rudolph Action”).

4. The “Effective Date” of this Settlement is the date on which the Court enters an order granting final approval and entering judgment consistent therewith, as required by California Rules of Court, Rule 3.769. If objections to the settlement are filed and not subsequently withdrawn, the Effective Date of the Settlement is the sixty-fifth (65th) day after notice of the final approval order and judgment is mailed, unless an appeal is filed, in which case the Effective Date is the day after (a) the settlement is upheld by the Court of Appeals, or (b) all appeals are dismissed.

6. The “Settlement Class” shall be defined as “all current and former hourly paid or non-exempt employees who have worked for Defendant in California from March 19, 2018 through

1 February 24, 2022 (the “Class Period”). When the Parties mediated in July 2021, Defendant
2 represented that the Settlement Class included approximately 904 members who worked
3 approximately 99,741 pay periods.

4 7. Members of the Settlement Class shall collectively be referred to as a “Class
5 Member” or “Class Members.” Any Class Member who files a timely request for exclusion, as
6 detailed below, will be excluded from the final Settlement Class.

7 8. The “Sales Sub-Class” shall be defined as “all current and former hourly paid or
8 non-exempt employees who worked for Defendant as sales and/or operations coordinators or jobs
9 with similar titles at any time since March 19, 2018. When the Parties mediated in July 2021,
10 Defendant represented that the Sales Sub-Class includes approximately 199 members who worked
11 approximately 19,356 pay periods.

12 9. The “Releasing Parties” shall be defined as the Plaintiffs, the Aggrieved Employees,
13 and the Settlement Class and includes each employees’ spouses, heirs, executors, administrators,
14 trustees, and/or permitted assigns of each employee of the Settlement Class and Aggrieved
15 Employees.

16 **B. General.**

17 1. On March 4, 2020, Plaintiff Martin exhausted the pre-filing requirements of the
18 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

19 2. On or about March 16, 2020, Plaintiff Martin initiated the Martin Action by filing a
20 class action Complaint which was subsequently amended on or about July 9, 2020 to include
21 additional claims for PAGA on behalf of himself and all other aggrieved employees. As part of the
22 settlement approval process, Plaintiff Martin shall seek, with the good faith cooperation of Plaintiff
23 Rudolph and Defendant, to file a Second Amended Complaint which shall add Plaintiff Rudolph
24 as an additional class representative in the Martin action as well as incorporate the class and PAGA
25 definition and class and PAGA claims asserted in that action. The Parties shall cooperate thereafter
26 in good faith to accomplish a court-approved settlement of the Martin amended action which shall
27 release all claims in the Second Amended Complaint.
28

1 3. On November 21, 2019, Plaintiff Rudolph exhausted the pre-filing requirements of
2 the PAGA.

3 4. On or about April 15, 2020, Plaintiff Rudolph initiated the Rudolph Action by filing
4 a Complaint on behalf of himself and all similarly-situated employees of Defendant in the State of
5 California. Plaintiff filed a First Amended Complaint on March 3, 2021, and later filed his operative
6 Second Amended Complaint on September 21, 2021. As amended, Plaintiff Rudolph's Second
7 Amended Complaint asserts class action and PAGA representative claims against Defendant. In
8 the interest of avoiding duplicative litigation while this proposed settlement is seeking court
9 approval in the consolidated Martin action, Plaintiff and Defendants will cooperate in good faith
10 request a stay, including via formal motion if necessary, of the Rudolph Action and seek dismissal
11 following final approval of the consolidated actions.

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

25 6. The Class Representatives contend that Defendant violated the California Labor
26 Code and that this case is appropriate for class certification.

27 7. Class Counsel represent that they have conducted a thorough investigation into the
28 facts and law during the prosecution of this class action case, including the exchange of extensive

1 informal discovery and the review and verification of statistical data and other facts and information
2 provided by Defendant. Counsel for the Parties also represent that they have investigated the
3 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
4 potential defenses thereto, and the damages claimed by Plaintiffs.

5 8. On July 23, 2021, following their exchange of information regarding the claims and
6 defenses asserted by the Parties, counsel for the Parties engaged in a global mediation with Louis
7 Marlin. After mediation and further discussions and negotiations based upon the progress made at
8 mediation the Parties were able to reach the material terms of this Settlement.

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

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

24 **C. Terms of Settlement.**

25 1. The financial terms of the settlement are as follows:

26 (a) **Gross Settlement Amount:** The Parties agree to settle the Actions for a
27 Gross Settlement Amount of Six Hundred Thousand U.S. Dollars (\$600,000.00) (“the Gross
28 Settlement Amount”), to be paid if not reduced not later than thirty (30) calendar days after entry

1 of the final approval order and judgment. The Gross Settlement Amount includes the attorneys'
2 fees of Class Counsel, litigation costs and expenses (which includes, without limitation, all such
3 fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the
4 settlement, providing any notices required as part of the settlement, securing Court approval of the
5 settlement, and obtaining judgment in the Actions), the enhancement/general release payments to
6 each Class Representative, as approved by the Court, the payment to the LWDA pursuant to the
7 PAGA claims in the Actions, and all costs of administration, including, without limitation,
8 settlement administration fees and expenses. Defendant shall pay all employer payroll tax
9 obligations due on wage payments made from the Net Settlement Amount in addition to, and
10 separate and apart from, the Gross Settlement Amount.

11 (b) **Net Settlement Amount:** "Net Settlement Amount" is defined as the Gross
12 Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees and
13 documented litigation costs and expenses incurred or advanced by Class Counsel, the general
14 release payment to each Class Representative, the payment to the LWDA pursuant to PAGA, and
15 the costs of administering the settlement.

16 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment
17 Amount" means the portion of the Net Settlement Amount distributable to each Class Member who
18 participates in the Settlement (i.e., who does not submit a valid request for exclusion form). The
19 Individual Payment Amounts will be calculated as follows:

20 (i) The number of workweeks worked by the entire Class will
21 be determined based upon Defendant's records and utilized as the Total Class Workweeks for the
22 subsequent calculations.

23 (ii) The number of workweeks for the Sales Subclass shall be
24 determined based upon Defendants Records and the percentage of Sales Subclass Workweeks
25 compared to Total Class Workweeks shall be determined.

26 (iii) The Claims Administrator shall then utilize this information
27 to determine the appropriate amount of the Net Settlement Amount to be distributed to the entire
28 Class and Sales Subclass by calculating the amounts necessary to compensate the Sales Subclass
in a ratio of 3:2 compared to the non-Sales Subclass Members from the Net Settlement Amount.

(iv) The Claims Administrator shall then utilize the applicable
weekly rate ("Workweek Value") for each subclass to calculate the individual participating Class

1 Member's Payment Amount. The weekly rate shall be multiplied by the number of weeks each
2 individual participating Class Member worked in each subclass as a proportion of the total
3 subclass for Defendant in California during the Class Period to yield their Individual Payment
4 Amount. Each Participating Settlement Class Member who does not opt out will receive an
5 Individual Payment Amount equal to their individual weeks worked for Defendant in California
during the Class Period multiplied by the Workweek Value based upon the subclass to which they
belong.

6 (d) **Tax Treatment:** For tax purposes, each Individual Payment Amount will be
7 apportioned (a) 20% as unpaid wages (reported on an IRS Form W-2 and subject to applicable
8 withholdings); and (b) 80% as penalties and interest (apportioned 50% to each, and reported on an
9 IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be
10 subject to any applicable wage garnishments, liens, or other legally mandated treatment as required
11 by law.

12 (e) **PAGA Payments:** The Parties agree that Twenty Thousand Dollars
13 (\$20,000.00) shall be allocated to settle Plaintiffs' claims brought pursuant to PAGA. Of this
14 amount, Seventy-Five Percent (75%), or Fifteen Thousand Dollars (\$15,000.00) shall be paid to
15 the LWDA, and Twenty-Five Percent (25%), or Five Thousand Dollars (\$5,000.00) shall be paid
16 to the Aggrieved Employees on a pro-rata basis based on the number of work weeks that they
17 worked during the PAGA Period and that amounts will be the "PAGA Payment."

18 (f) **Enhancement Payment/General Release Payment to each Class**
19 **Representative:** The amount awarded to each Class Representative as an enhancement/general
20 release payment will be set by the Court in its discretion, not to exceed Seven Thousand Five
21 Hundred Dollars (\$7,500.00) each, totaling Fifteen Thousand Dollars (\$15,000.00). This amount
22 will be deducted from the Gross Settlement Amount. An IRS Form 1099 will be issued to each
23 Class Representative for their general release payment. Defendant agrees not to dispute or
24 otherwise object to the enhancement/general release payments if each Plaintiff requests \$7,500 or
25 less.

26 (g) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
27 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
28 the settlement award that has been made available for the Settlement Class by the efforts of Class

1 Counsel. The amount awarded shall not exceed one-third of the Gross Settlement Amount (i.e.,
2 \$200,000). The Court Approved Attorneys' fees shall be paid 60% to ShortLegal, APC and 40%
3 to Crosner Legal, P.C. An IRS Form 1099 will be issued to Class Counsel with respect to the award
4 of attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
5 requested by Class Counsel if such request is consistent with this paragraph.

6 Plaintiffs' Counsel may elect to have the Settlement Administrator, directly or indirectly,
7 disperse all or part of its attorneys' fees paid to either Plaintiffs' Counsel in periodic payments,
8 through a structured settlement. The electing Plaintiffs' Counsel will bear any and all costs, fees,
9 and expenses of administration for any periodic payments of such attorney's fees and shall be fully
10 responsible for any taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any
11 issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such
12 periodic payments, including, without limitation, any such issues, claims and/or disputes brought
13 by the state or federal government concerning the payment of taxes thereon. The Settlement
14 Administrator shall separately bill Plaintiffs' Counsel for any and all fees, costs, and expenses of
15 administration associated with any periodic payments of such attorneys' fees. Plaintiffs' Counsel
16 shall indemnify, defend, and hold Defendant harmless for any and all taxes, costs, liabilities,
17 attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of,
18 related to, or incurred in connection with any such periodic payments.

19 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
20 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
21 litigation costs and expenses, not to exceed Twenty Thousand Dollars (\$20,000.00). An IRS Form
22 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant
23 agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel
24 so long as the request does not exceed \$20,000.

25 (i) **Settlement Administration Costs:** The fees and other charges of the
26 Settlement Administrator to administer the Settlement are expected to total no more than Twenty
27 Thousand Dollars (\$20,000.00) and will be paid from the Gross Settlement Amount. These fees
28 shall include any costs associated with the required tax reporting on any Individual Payment

1 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the
2 Parties have agreed that Phoenix Settlement Administrators will serve as a neutral third-party
3 claims' administrator ("Settlement Administrator") to perform all acts related to providing notice
4 to the Settlement Class. Settlement Administrator shall be responsible for (a) printing and
5 distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class
6 Members; (b) administering the settlement; (c) processing exclusions and objections; (d) resolving
7 disputes; (e) distributing the Gross Settlement Amount as directed by the Court and as set forth
8 herein; (f) tax reporting; (g) providing necessary weekly status reports; (h) establishing a QSF; and
9 (i) other duties and responsibilities set forth herein and as customarily performed in the context of
10 class and PAGA action settlement in California state court.

11 (j) **Alteration by Court Decision:** Notwithstanding any other provision of this
12 Agreement, if the Court should fail to award the full amount of any sought deduction for attorney's
13 fees, costs or class representative enhancements from the GSA these amounts shall not revert to the
14 Defendant and will become part of the Net Settlement Amount. However, any other modification
15 of material terms of this Agreement shall give either party the right, but not the obligation for
16 cancellation or termination of the Settlement Agreement or grounds for limiting any other provision
17 herein. However, in the event that the Court shall deny approval of this Agreement and/or attempt
18 to modify its material terms other than the Attorney's Fees, Costs or Class Representative
19 Enhancements, the parties shall cooperate in good faith to address these concerns and resubmit the
20 Agreement for approval consistent with the original intent of the material terms of the agreement
21 between the parties. It is agreed that no order of the Court, including any order concerning
22 attorneys' fees, may alter or otherwise increase the Maximum Settlement Amount.

23 (k) **No Warranty by Defendant:** Plaintiffs understand and agree that
24 Defendant is not providing Plaintiffs or Class Members with tax or legal advice and that Defendant
25 makes no representations regarding tax obligations or consequences, if any, related to this
26 Settlement Agreement.

1 **D. Release of Claims.**

2 1. Upon the Effective Date, and subject to Defendant's full payment of the Gross
3 Settlement Amount, Plaintiffs and all Settlement Class members who do not timely opt-out will
4 be deemed to have fully released and discharged Defendant, and any of its related companies,
5 assigns, current and former employees, insurers and attorneys ("Released Parties") from any and
6 all Released Claims which arose during their employment in a non-exempt position in California
7 during the Class Period. "Released Claims" are all claims asserted in the Actions or any other
8 claims that could have been asserted in the Actions based on the facts alleged, including but not
9 limited to: unpaid wages (including overtime and commissions), regular rate of pay claims for
10 overtime and wage premiums, failure to provide meal periods or provide premium pay for missed
11 meal periods, failure to provide rest periods or provide premium pay for missed rest periods, failure
12 to indemnify or reimburse for business expenses, waiting time penalties, wage statement
13 violations, unfair business practice claims premised on the above claims, and PAGA claims
14 premised on the above claims.

15 2. Upon the Effective Date, and subject to Defendant's full payment of the Gross
16 Settlement Amount, Releasing Parties do and shall be deemed to have fully, finally, and forever
17 released, settled, compromised, relinquished, and discharged, to the fullest extent possible, any
18 and all of the Released Parties of and from any and all PAGA Released Claims that accrued during
19 the PAGA Period. "PAGA Released Claims" are PAGA claims premised on the Released Claims.
20 The Aggrieved Employees will have no option to opt out of the PAGA Released Claims.

21 3. Plaintiffs and Defendant expressly agree that the Released Claims do not include
22 the claims asserted by Plaintiff Erik Rudolph in his pending action against Defendant for, inter
23 alia, wrongful termination and disability discrimination in violation of the California Fair
24 Employment and Housing Act, and any claims that could be asserted based on the facts alleged in
25 the operative Complaint, originally filed in Sacramento Superior Court on October 8, 2021, Case
26 No. 34-2021-00309513, and currently being heard before the United States District Court for the
27 Eastern District of California, Case No. 2:21-cv-02304-KJM-KJN, removed from California
28 Superior Court on December 14, 2021.

1 4. Except as provided herein, , Plaintiffs (on behalf of themselves and their spouse,
2 heirs, executors, administrators, trustees, and/or permitted assigns) also agrees to a general release
3 of any and all claims against Defendant and the Released Parties—which shall include without
4 limitation any and all claims which in any way relate to his employment with Defendant, under
5 State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the
6 Complaint or not, including but not limited to any claims under the FLSA, Title VII, ADA, FEHA,
7 ADEA, PAGA, California Labor Code, or any Industrial Welfare Commission Wage Order—now
8 existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence
9 from the beginning of time to the date of execution hereof. Plaintiff further expressly waives and
10 relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of Section
11 1542 of the California Civil Code, which provides: “**A general release does not extend to claims**
12 **that the creditor or releasing party does not know or suspect to exist in his or her favor at**
13 **the time of executing the release and that, if known by him or her, would have materially**
14 **affected his or her settlement with the debtor or released party.”**

15 **E. Notice and Exclusion Process.**

16 Within seven (7) calendar days after entry of the order granting preliminary approval of this
17 Settlement, Defendant shall provide to the Settlement Administrator a list of all Class Members,
18 including their last known addresses, telephone numbers, social security numbers, work weeks
19 worked during the Class Period, work weeks worked during the PAGA Period, and identification
20 of those in the Sales Sub-Class (“Settlement Class Information”). The names, addresses, telephone
21 numbers, and Social Security numbers will only be disclosed to the Settlement Administrator and
22 not to Plaintiffs’ Counsel. All information provided to the Settlement Administrator will be marked
23 CONFIDENTIAL. This information shall be kept confidential and shall not be disclosed, either in
24 writing or orally, by the Settlement Administrator to Plaintiff’s counsel unless approved by
25 Defendant. The Settlement Administrator shall use due care with respect to the storage, custody,
26 use, and/or dissemination of the confidential information. Such information must be stored in a
27 secure fashion and all persons who access the data must agree to keep it confidential.
28

1 1. A notice of pendency of class action, proposed settlement and hearing date for
2 Court approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the
3 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
4 within fourteen (14) calendar days after entry of the order granting preliminary approval. Attached
5 to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the
6 form attached hereto as Exhibit 2.

7 2. The Settlement Administrator will make reasonable efforts to ensure that the Class
8 Notice and Request for Exclusion Form are sent to all Class Members including an address check
9 with the U.S. Postal Service NCOA database prior to the initial distribution of the Notice Packets.
10 It will conclusively be presumed that if an envelope has not been returned within thirty (30) days
11 of the mailing that the Class Member received the Class Notice. In the event of returned or non-
12 deliverable notices, the Settlement Administrator will make reasonable efforts to locate Class
13 Members and re-send the notices.

14 3. Each Class Member will be fully advised of the settlement, the ability to object to
15 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
16 inform the Class Members of the Court-established deadlines for filing objections and a Request
17 for Exclusion Form.

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

1 5. All Class Members who do not submit a Request for Exclusion Form will be
2 eligible to receive an Individual Payment Amount, which shall be mailed to them if and when the
3 Effective Date occurs.

4 6. In order to elect not to participate in the Settlement, a Class Member must mail a
5 Request for Exclusion Form to the Settlement Administrator no later than forty-five (45) calendar
6 days after the initial mailing of the Class Notice and Request for Exclusion Form to Class
7 Members, unless the Court requires a longer period, in which case the Court ordered exclusion
8 period will apply. The date of the postmark shall be deemed the date of submission. The timeliness
9 of submitted Request for Exclusion Forms will be determined by valid postmark. If the 45th day
10 falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day
11 on which the U.S. Postal Service is open. No Aggrieved Employee may opt out of the PAGA
12 Payment.

13 7. The deadline for submission of Exclusion Forms shall be extended once by 30 days
14 for those Class Members whose Class Notice and Exclusion Form are returned as “undeliverable.”
15 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
16 on which the U.S. Postal Service is open.

17 8. The Settlement Administrator will search for additional addresses on returned mail
18 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15
19 days of receipt of the returned mail. The 30-day extended time limit will run from the date of the
20 second mailing for those Class Members. To the extent a Class Notice from the initial mailing is
21 not returned within 30 days, it shall be deemed to have been sent to a valid address even if it is
22 thereafter returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be
23 used to locate Class Members. If the initial Class Notice and Request for Exclusion Form is
24 returned, the Settlement Administrator will search using the social security number for a more
25 current address. If no address is found within 10 days, no further action is required.

26 9. The Settlement Administrator will notify the Parties of the total number of valid
27 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
28

1 Request for Exclusion Forms fifty-five (55) days following the initial mailing of the Class Notice
2 and Request for Exclusion Forms to Class Members.

3 10. In order to object to the settlement, a Class Member must mail his or her objection
4 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
5 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
6 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
7 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
8 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
9 extended for any reason.

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

17 12. Defendant shall deposit the Gross Settlement Amount as provided for in paragraph
18 C(1)(a) above into the Qualified Settlement Fund established by the Settlement Administrator no
19 later than thirty (30) calendar days after entry of the final approval order and judgment.

20 13. The Settlement Administrator shall disburse the Gross Settlement Amount within
21 fifteen (15) calendar days after its deposit by Defendant, subject to the prior occurrence of the
22 Effective Date. Class Members must cash each of their Individual Payment Amount checks within
23 one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The
24 value of any checks uncashed more than one hundred eighty (180) days after mailing shall be paid
25 to the State of California State Controller's Office- Unclaimed Property Fund, to be held in the
26 name of the respective Class Member.

1 **F. Duties of the Parties Prior to Court Approval.**

2 1. Promptly after execution of this Settlement Agreement, Plaintiffs will seek leave
3 to file an amended Complaint in the Martin Action via stipulation or noticed motion to add
4 Rudolph as an additional Plaintiff and to include Rudolph's claims;

5 2. In conjunction with the application for this amendment or following the formal
6 amendment to the complaint to add Rudolph to the Martin Action, move the Court for preliminary
7 approval of this settlement and entry of an order accomplishing the following:

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

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

11 (c) approving as to form and content the proposed Request for Exclusion
12 Form;

13 (d) preliminarily certifying the Settlement Class for purposes of settlement;

14 (e) preliminarily approving the PAGA penalties of \$15,000 to the LWDA;

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

16 (g) preliminarily setting the enhancement/general release payment payable to
17 each Class Representative;

18 (h) preliminarily approving Phoenix Settlement Administrators as the
19 Settlement Administrator and its estimated fees and costs not to exceed \$20,000.

20 3. Plaintiffs and Defendant will take such measures as necessary to avoid the
21 concurrent and duplicate litigation of the *Rudolph* class action, United States District Court,
22 Western Division, Case No. 2:20-cv-05412-ODW-E, while the Parties seek Court approval of this
23 Settlement.

24 4. The Parties shall submit this Settlement Agreement to the Court and the LWDA in
25 support of Plaintiffs' unopposed motion for preliminary approval of the settlement.

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

27 1. In connection with the hearing on final approval of the settlement provided for in
28 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)

1 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
2 by the Court):

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

5 (b) approving Class Counsel's application for an award of attorneys' fees and
6 reimbursement of documented litigation costs and expenses, the enhancement/general release
7 payment to each Class Representative, the payment to the LWDA, and the costs of administering
8 the settlement; and

9 (c) Entering judgment in the Martin Action, in accordance with this
10 Stipulation, pursuant to Cal. Rules of Court, Rule 3.769(h), and dismissing the Rudolph Action
11 with prejudice.

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

15 **H. Miscellaneous Provisions:**

16 1. **Voiding the Agreement.**

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

21 2. **Parties' Authority.**

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

24 3. **Mutual Full Cooperation.**

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

1 by this Settlement Agreement and any other efforts that may become necessary by order of the
2 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon
3 as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance
4 and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's
5 preliminary and final approval of the settlement.

6 **4. No Prior Assignments.**

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

11 **5. No Admission.**

12 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
13 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
14 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
15 Settlement Agreement with the intention of avoiding further disputes and litigation with the
16 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
17 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
18 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
19 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

20 **6. Notices.**

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

25 **To Plaintiffs and the Settlement Class:**

26 Brian R. Short, Esq.
27 Dorota A. James, Esq.
28 SHORTLEGAL, APC
 350 10th Avenue, Suite 1000
 San Diego, CA 92101

1
2 And

3 Blake Jones. Esq.
4 Zach Crosner, Esq.
5 Crosner Legal, P.C.
9440 Santa Monica Blvd., Suite 301 Beverly Hills, CA 90210

6 **To Defendant:**
7 Tim Johnson, Esq.
8 Cameron Flynn, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4370 La Jolla Village Dr, Suite 990
9 San Diego, CA 92122

10 7. **Construction.**

11 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
12 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
13 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
14 any Party or their respective counsel participated in the drafting of this Settlement Agreement.

15 8. **Captions and Interpretations.**

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

20 9. **Modification.**

21 This Settlement Agreement may not be changed, altered, or modified, except in writing and
22 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
23 discharged except by performance in accordance with its terms or by a writing signed by each of
24 the Parties hereto on their attorneys.

25 10. **Integration Clause.**

26 This Settlement Agreement contains the entire agreement between the Parties relating to
27 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
28

1 understandings, representations, and statements, whether oral or written and whether by a Party or
2 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

3 **11. Binding on Assigns.**

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

6 **12. Governing Law.**

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

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

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

16 **14. Counterparts.**

17 This Settlement Agreement may be executed in counterparts, and when each Party has
18 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
19 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
20 Agreement, which shall be binding upon and effective as to all Parties.

21 **15. Confidentiality**

22 Until Plaintiffs file their motion for preliminary approval of the class action settlement, the
23 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
24 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
25 agencies, or as otherwise required by law.

26 **16. No Publicity**

27 Plaintiffs and their respective Counsel will not contact the media about the settlement or
28 respond to any inquiries by the media regarding the Settlement, other than to state that the matter

1 was amicably settled, and the Court did not find Defendant liable. Plaintiffs and their respective
2 Counsel also will not post any information about the settlement on social media or their firms'
3 websites.

4
5 **17. Representation Regarding Class Size/Escalator Clause.**

6 Defendant represents that the Settlement Class includes approximately 1,102 members who
7 worked no more than 115,893 workweeks. If the number of work weeks worked by the Class
8 Members increases by more than Ten Percent (10%), then the Gross Settlement Amount will
9 increase proportionately with the increase over the ten percent threshold.

10 Dated: ~~July 20, 2022~~

11 By: 

Hector Martin (Jul 20, 2022 08:43 PDT)

Hector Martin
Plaintiff and Class Representative

12
13
14 Dated: July __, 2022

By:

Eric Rudolph
Plaintiff and Class Representative

15
16
17 Dated: July __, 2022

HERC RENTALS, INC.

18 By:

19
20 Its: _____

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

22 Dated: July 22, 2022

SHORTLEGAL APC

23
24 By: 

Brian R. Short, Esq.
Dorota A. James, Esq.
Counsel for Plaintiff Hector Martin

1 was amicably settled, and the Court did not find Defendant liable. Plaintiffs and their respective
2 Counsel also will not post any information about the settlement on social media or their firms'
3 websites.

4
5 **17. Representation Regarding Class Size/Escalator Clause.**

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7 worked no more than 115,893 workweeks. If the number of work weeks worked by the Class
8 Members increases by more than Ten Percent (10%), then the Gross Settlement Amount will
9 increase proportionately with the increase over the ten percent threshold.

10 Dated: July __, 2022

By:

Hector Martin
Plaintiff and Class Representative

14 Dated: July 21, 2022

By:

Erik T. Rudolph
Eric Rudolph
Plaintiff and Class Representative

17 Dated: July __, 2022

HERC RENTALS, INC.

By:

Its: _____

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

22 Dated: July __, 2022

SHORTLEGAL APC

By:

Brian R. Short, Esq.
Dorota A. James, Esq.
Counsel for Plaintiff Hector Martin

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CROSNER LEGAL, P.C.

Dated: July 20, 2022

By: 
Zach Crosner, Esq.
Blake Jones, Esq.
Counsel for Plaintiff Eric Rudolph

Dated: July ___, 2022

OGLETREE, DEAKINS, NASH, SMOAK, &
STEWART, P.C.

By: _____
Tim Johnson, Esq.
Cameron Flynn, Esq.
Counsel for Defendant

1 was amicably settled, and the Court did not find Defendant liable. Plaintiffs and their respective
2 Counsel also will not post any information about the settlement on social media or their firms'
3 websites.

4
5 **17. Representation Regarding Class Size/Escalator Clause.**

6 Defendant represents that the Settlement Class includes approximately 1,102 members who
7 worked no more than 115,893 workweeks. If the number of work weeks worked by the Class
8 Members increases by more than Ten Percent (10%), then the Gross Settlement Amount will
9 increase proportionately with the increase over the ten percent threshold.

10 Dated: July __, 2022

By:

Hector Martin
Plaintiff and Class Representative

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14 Dated: July __, 2022

By:

Eric Rudolph
Plaintiff and Class Representative

15
16
17 Dated: July __, 2022

HERC RENTALS, INC.

By:

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Its: SVP & CHRO

APPROVED AS TO FORM AND CONTENT:

Dated: July __, 2022

SHORTLEGAL APC

By:

Brian R. Short, Esq.
Dorota A. James, Esq.
Counsel for Plaintiff Hector Martin

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CROSNER LEGAL, P.C.

Dated: July ___, 2022

By: _____
Zach Crosner, Esq.
Blake Jones, Esq.
Counsel for Plaintiff Eric Rudolph

Dated: August 18, 2022

OGLETREE, DEAKINS, NASH, SMOAK, &
STEWART, P.C.

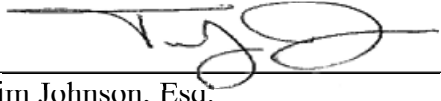
By:  _____
Tim Johnson, Esq.
Cameron Flynn, Esq.
Counsel for Defendant

EXHIBIT B

(Redline attached as Exhibit B(1))

Brian R. Short (SBN 236140)
Email: Brian@ShortLegal.com
Dorota A. James (SBN 309933)
Email: Dorota@ShortLegal.com
SHORTLEGAL, APC
350 10th Ave., Suite 1000
San Diego, California 92101
Telephone: 619.272.0720
Facsimile: 619.839.3129

Attorneys for Plaintiff HECTOR MARTIN
[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

HECTOR MARTIN and ERIK RUDOLPH,
Individually and on behalf of all similarly-
situated employees of Defendants in the State
of California,

Plaintiffs,

v.

HERC RENTALS, INC and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2020-00016112-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

SECOND AMENDED COMPLAINT

CLASS ACTION [CCP § 382]

1. Failure to Pay Minimum and Regular Wages
2. Failure to Pay Overtime Wages
3. Failure to Authorize and Permit Rest Periods
4. Failure to Provide Meal Periods
5. Failure to Indemnify/Reimburse Expenses
6. Failure to Provide and Maintain Accurate Itemized Wage Statements
7. Failure to Timely Pay Wages Due Upon Separation of Employment
8. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
9. PAGA Claims for Civil Penalties

Date Complaint Filed: March 16, 2020
Judge: Ronald F. Frazier
Dept.: C-65

1 Zachary M. Crosner (Bar No. 272295)

2 zach@crosnerlegal.com

3 Jamie Serb (Bar No. 289601)

4 jamie@crosnerlegal.com

5 **CROSNER LEGAL, P.C.**

6 9440 Santa Monica Blvd., Ste. 301

7 Beverly Hills, CA 90201

8 Tel: (310) 496-5818

9 Fax: (310) 510-6429

10 Attorneys for Plaintiff ERIK RUDOLPH

1 Plaintiffs HECTOR MARTIN and ERIK RUDOLPH on behalf of themselves and all other current
2 and former similarly-situated and aggrieved employees alleges as follows:

3 I.

4 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

5 1. Plaintiffs HECTOR MARTIN (hereinafter “MARTIN”) and ERIK RUDOLPH
6 (hereinafter “RUDOLPH”) (collectively referred to as “Plaintiffs”) bring this individual and class action
7 suit against Defendant HERC RENTALS, INC. (“HERC”) and DOES 1 through 50, inclusive
8 (collectively referred to herein as “Defendants”), on behalf of themselves and all other current and former
9 similarly-situated and aggrieved employees for engaging in a systemic pattern of wage and hour violations
10 under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

11 2. HERC RENTALS, INC. is a full-service equipment rental firm with approximately 270
12 company-operated locations primarily in the United States and Canada, including San Diego County,
13 California.

14 3. MARTIN, at times relevant, was employed by Defendants as sales and operations
15 coordinator in San Diego, California. RUDOLPH, at all times relevant, was employed by Defendants as
16 a driver, delivering rental equipment throughout the greater Sacramento area.

17 4. Plaintiffs are informed and believe, and thereon allege, that Defendants decreased their
18 employment-related costs in order to increase their level of productivity and profits by systematically
19 violating both state wage and hour laws and the applicable IWC Wage Order, including, but not limited
20 to:

- 21 a. Failing to pay for minimum, regular and overtime wages for all hours worked;
- 22 b. Failing to provide compliant meal and rest breaks;
- 23 c. Failing to indemnify Plaintiffs and all other current and former similarly-situated
24 and aggrieved employees for their necessary expenses and losses in discharging
25 their duties;
- 26 d. Failing to provide and maintain accurate records and itemized wage statements;
- 27 and

1 e. Failing to timely pay wages due during and upon termination of employment.

2 5. Plaintiffs bring this lawsuit seeking injunctive, restitution and monetary relief against
3 Defendants, and each of them, on behalf of Plaintiffs individually and on behalf of all other current and
4 former similarly-situated and aggrieved employees to recover, among other things, unpaid wages and
5 benefits, interest, penalties, liquidated damages, attorney's fees and costs pursuant to California Labor
6 Code §§ 201, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.7, 247, 248.5, 510, 511, 512, 558,
7 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2810.5, Labor Code § 2699, and California Code of Civil
8 Procedure 1021.5, and provisions of the applicable IWC Wage Order. Plaintiffs reserve the right to name
9 additional representatives throughout the State of California.

10 **II.**

11 **PARTIES, JURISDICTION AND VENUE**

12 6. Plaintiff MARTIN is and at all relevant times was a resident of the State of California and
13 was employed by Defendants in their San Diego office, California. Plaintiff RUDOLPH is and at all
14 relevant times was a resident of the State of California and was employed by Defendants in the Sacramento
15 area.

16 7. Defendant HERC RENTALS, INC. ("HERC"), is a full-service equipment rental firm with
17 approximately 270 company-operated locations primarily in the United States and Canada, including business
18 offices in San Diego, California.

19 8. Plaintiffs are informed and believe, and thereon allege, that at times relevant HERC
20 RENTALS, INC. and Does 1 through 50 are the alter egos of each other and directly or indirectly, or
21 through agents or other persons, employed Plaintiffs and all other current and former similarly-situated
22 and aggrieved employees , and exercised control over their wages, hours, and/or working conditions.
23 Plaintiffs are informed and believe, and thereon allege, that each Defendants directly or indirectly, or
24 through agents or other persons, acted and/or ratified in all respects pertinent to this action as the agent of
25 the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
26 and the acts of each Defendant is legally attributable to the other Defendants.

10. Defendants, at all relevant times, conducted business in the State of California and were employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and or 558.1.

11. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiffs. Plaintiffs will amend this Complaint setting forth the true names and capacities of these fictitious Defendants when they are ascertained. Plaintiffs are informed and believe, and on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

12. Jurisdiction and venue are proper for San Diego County Superior Court because Defendants maintain offices, transact business, and/or have an agent in San Diego County and some of the acts and events complained of herein occurred in the judicial district of San Diego County and the State of California.

GENERAL ALLEGATIONS

13. Plaintiff MARTIN was employed by Defendants as sales and operations coordinator since April 7, 2017 to February 28, 2020 when he was terminated for an alleged violation of the company policy regarding use of company's vehicle. During his employment with HERC, Mr. Martin was classified as a non-exempt employee and denied the protections afforded to him pursuant to the California Labor Code. He worked at HERC's store located in San Diego, California.

14. Plaintiff RUDOLPH was employed by Defendants in Sacramento, California as a non-exempt, hourly-paid driver, delivering rental equipment from on or about February 25, 2019 to October 1, 2019. Plaintiff RUDOLPH typically worked shifts over ten hours, with most shifts in excess of twelve hours.

15. Defendant HERC RENTALS, INC. is an employer doing business in the State of California and, according to its website HERC is a full-service equipment rental firm operating its business primarily in the United States and Canada.

16. At all relevant times, Plaintiffs, and on information and belief, all other current and former similarly-situated and aggrieved employees worked under numerous illegal policies, practices, and procedures of Defendants relating to its payment of wages, meal and rest periods, wage statements, recordkeeping, and reimbursement policies. Defendants failed to pay all regular, minimum and overtime wages to Plaintiffs and on information and belief, all other current and former similarly-situated and aggrieved employees as a result of Defendants' unlawful policies and practices.

17. During his tenure with Defendants, Plaintiffs and all other current and former similarly-situated and aggrieved employees were often employed through various illegal policies designed by Defendants to systematically reduce their costs of doing business at the expense of its employees.

18. At all relevant times, Plaintiffs and all other current and former similarly-situated and aggrieved employees were non-exempt hourly employees and eligible to earn non-discretionary bonuses and commissions based on sales and performance.

19. At all relevant times, Plaintiffs and all other current and former similarly-situated and aggrieved employees regularly worked more than 8 hours in workday and/or more than forty (40) hours in a workweek. Plaintiffs and all other current and former similarly-situated and aggrieved employees also routinely earned non-discretionary bonuses and commissions during the same pay periods in which they worked overtime. Plaintiffs allege that Defendants failed to properly incorporate their non-discretionary bonuses into their regular hourly rate of pay for the purpose of calculating their overtime rate, as required by California law. For example, there were pay periods during which Plaintiff RUDOLPH received non-discretionary remunerations such as "TobCredi," "IEL," however the overtime rate for those pay periods

1 did not incorporate those non-discretionary remunerations into the regular pay rate for purposes of
2 calculating the owed overtime rate as required by law. For example, in the same pay period of 5/24/2019
3 to 5/30/2019, Plaintiff RUDOLPH was compensated his overtime at a rate of \$39.75 per hour, which is
4 precisely 1.5 times his regular rate of pay of \$26.50 per hour. During this same pay period, Plaintiff
5 RUDOLPH alleges that he was compensated non-discretionary remunerations, including TobCredi of
6 \$2.88 and IEL of .17, which were not incorporated into the regular rate of pay for purposes of calculating
7 the overtime rate of pay. As a result, the overtime rate that Defendants paid Plaintiffs was miscalculated
8 and incorrect and Plaintiffs and other employees were routinely underpaid.

9 20. Additionally, Defendant at times paid Plaintiff RUDOLPH multiple rates of pay in one
10 pay period for the same kind of work, but failed to average the rates of pay when calculating overtime.
11 Under California law, “[w]here two rates of pay are paid during a workweek, the California method for
12 determining the regular rate of pay for calculating overtime in that workweek mirrors the federal method,
13 based upon the weighted average of all hourly rates paid.” DLSE Manual 49.2.5 (citing 29 CFR §
14 778.115). This “weighted average” method provides, “[w]here an employee in a single workweek works
15 at two or more different types of work for which different non-overtime rates of pay (of not less than the
16 applicable minimum wage) have been established, their regular rate for that week is the weighted average
17 of such rates. That is, the total earnings (except statutory exclusions) are computed to include his
18 compensation during the workweek from all such rates, and are then divided by the total number of hours
19 worked at all jobs. . .” 29 CFR § 778.115. Employer’s failure to average the rates of pay when calculating
20 overtime resulted in underpaid overtime at times, as well as inaccurate and incomplete wage statements.
21 For example, in the pay period of 6/14/2019 to 6/20/2019, Plaintiff RUDOLPH was compensated with
22 two rates of pay, his regular rate of \$26.50 per hour and a second rate of pay for “OETBL” at \$53.04 per
23 hour. However, the 11.07 hours of overtime worked were paid at rate of \$39.75 per hour, which is
24 precisely 1.5 times his regular rate of pay of \$26.50 per hour, and thus failed to incorporate the .25 hours
25 of OETBL at \$53.04 when calculating the overtime rate of pay for this pay period.

26 21. At all relevant times, Defendant did not compensate Plaintiffs for all hours worked by
27 virtue of, among other things, required to perform off-the-clock work by virtue of Defendant’s time-
28

1 shaving/time-rounding policy. Defendant maintained and continues to maintain a policy and practice of
2 time-shaving/time-rounding requiring its employees, including Plaintiffs, to "round" the start and stop
3 times of their hours worked and/or only input their scheduled start and stop times, rather than actual hours
4 worked. For example, in the pay period of 5/24/2019 to 5/30/2019, Plaintiff RUDOLPH's wage statement
5 reflects that he was paid for 24 regular hours of work, and 4.1 hours of overtime. However, Plaintiff
6 RUDOLPH alleges that in actuality he worked nearly approximately 38 hours during the pay period, but
7 was significantly undercompensated as a result of Defendant's time-shaving/time-rounding policy and
8 practice. As shown, Defendant's time-shaving/time-rounding policies and practices as applied worked to
9 detrimentally shave and round time off from Plaintiff RUDOLPH's workdays. Plaintiffs allege on
10 information and belief that through the operation of Defendant's time-shaving/time-rounding system,
11 Plaintiffs would systematically be deprived of compensable time because the time-recording system
12 implemented by Defendant would almost always, if not always, understate actual compensable work time.
13 Upon information and belief, Defendant had actual or constructive knowledge that its time reporting/ time-
14 rounding policy resulted in underpaying Plaintiffs the wages he was owed. This time-shaving system,
15 implemented by and through Defendant, resulted in record-keeping violations as well as violations of
16 California's minimum and overtime wage laws. Additionally, Defendants required Plaintiffs to clock out
17 thirty minutes per shift despite having actual and/or constructive knowledge that Plaintiffs did not receive
18 compliant, uninterrupted, off-duty meal periods, resulting in underpayment of minimum wages and
19 overtime pay.
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21
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23 22. At all relevant times, Defendants did not maintain compliant off-duty meal period policies
24 for Plaintiffs as required by the California Labor Code, nor did they provide meal periods compliant under
25 California law, to Plaintiffs and other employees. Defendants failed to adequately inform Plaintiffs and
26 all other current and former similarly-situated and aggrieved employees of their rights to take compliant
27 off-duty meal periods.
28

23. Plaintiffs were not always provided proper meal periods during their employment. Plaintiffs were often forced to take late meal periods due to their workload/commentary from supervisors pressuring Plaintiffs to take late or otherwise improper meal periods. Plaintiff RUDOLPH was pressured by his supervisors to not make any stops while driving his routes and was at times told to eat any meals while driving, in order to ensure that deliveries were made timely. Plaintiff RUDOLPH was also required to monitor dispatch and/or cell phones during his meal periods, rendering these meal periods to be on-duty. Plaintiff RUDOLPH did not execute to a written on-duty meal period waiver agreement. Plaintiff RUDOLPH did not receive premium pay for these interrupted, cut short, missed, late and/or on-duty meal periods. Additionally, Plaintiff RUDOLPH was never provided with a second meal period when working shifts in excess of ten and/or twelve hours, and was never compensated a meal premium in lieu of these meal periods. For example, in the pay period of 6/14/2019 to 6/20/2019, Plaintiff RUDOLPH worked approximately two shifts in excess of 12 hours, and two additional shifts in excess of 10 hours, without being provided any second meal periods, and did not receive a meal period premium for these missed second meal periods. In fact, Plaintiff RUDOLPH never once received a second meal period in any shifts, and was never paid a second meal period premium.

24. Defendants failed to pay Plaintiffs and all other current and former similarly-situated and aggrieved employees meal period premium wages for each day in which they did not provide Plaintiffs and other current and former similarly-situated and aggrieved employees an opportunity to take a compliant meal period. Defendants also failed to pay Plaintiff RUDOLPH an additional hour of wages at his rate of pay for each workday a meal period was not provided and/or any meal period premium paid was improper due to Defendant's failure to incorporate all non-discretionary remuneration and rates of pay into the regular pay rate for purposes of calculating the owed premium. For example, in the pay period of 6/14/2019 to 6/20/2019, Defendant compensated Plaintiff RUDOLPH one meal break premium at his regular rate of pay of \$26.50. This premium rate of pay failed to incorporate all non-discretionary remunerations and additional rates of pay/shift differentials, including a TobiCred in an amount of \$2.88, an IEL in an amount of .17, and a OTDBL of .25 hours at a rate of \$53.04.

25. At all times relevant, Defendants did not maintain compliant off-duty rest period policies for Plaintiffs and all other current and former similarly-situated and aggrieved employees as required by the California Labor Code, nor did they provide rest periods compliant under California law, to Plaintiffs and other employees. During Plaintiffs' employment, Defendants had a common pattern and practice of failing to properly authorize and permit compliant off-duty rest periods to Plaintiffs and other all other current and former similarly-situated and aggrieved employees when they worked greater than 3.5 hours in a workday. Plaintiff RUDOLPH did not receive compliant, timely 10 (ten)- minute rest periods every four (4) hours or major fraction thereof. Plaintiff was typically required to work through his rest periods or any purported rest periods would be on-duty/interrupted/cut short due to the nature and constraints of his job duties and commentary from supervisors to take late/shorter breaks than they were entitled to or no breaks at all. Plaintiff RUDOLPH was also forced to remain on duty throughout the duration of his shifts, including during any purported rest periods, as Defendants required Plaintiff RUDOLPH to always monitor his cell phones for purposes of communicating with dispatch. Management pressured Plaintiff to RUDOLPH stay on their assigned routes and insisted Plaintiff RUDOLPH not take rest periods. Also, Defendant did not authorize or permit Plaintiff RUDOLPH to take a third rest period in shifts in excess of 10 hours. Plaintiff RUDOLPH was not paid rest period premiums for these missed/improper rest periods. For example, in the pay period of 6/14/2019 to 6/20/2019, Plaintiff RUDOLPH worked approximately 4 shifts in excess of 10 hours and alleges he did not receive any third rest periods, nor did he receive rest period premium pay in lieu of these missed rest periods. Defendant failed to furnish Plaintiff RUDOLPH with complete and accurate wage statements in compliance with Labor Code section 226. Among other things, Plaintiff RUDOLPH's wage statements did not accurately reflect, the total gross and net wages earned, including, all earned minimum and overtime wages; all owed sick leave pay; and all owed meal and rest period premiums for the pay period. Also, Defendant's wage statements did not accurately reflect all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

1 26. Defendants failed to pay Plaintiffs and other all other current and former similarly-situated
2 and aggrieved employees rest period premium wages for each day in which they did not authorize or
3 permit them to take compliant rest periods.

4 27. At all times relevant, Defendants failed to provide Plaintiffs and all other current and
5 former similarly-situated and aggrieved employees with wage statements that truly and accurately
6 reflected the wages due to them, specifically including but not limited to the proper number of overtime
7 hours worked during the period in which a non-discretionary bonus was earned. As a result, the proper
8 amount of wages was not properly calculated and accounted for as required by Labor Code § 226(a) and
9 Section 7 of the applicable Wage Order.

10 28. As a result of these deficiencies and inaccuracies, Plaintiffs and other all other current and
11 former similarly-situated and aggrieved employees were not able to promptly and easily determine from
12 this wage statements alone their total overtime and/or all wages earned.

13 29. Defendants further had a policy and practice of failing to indemnify Plaintiffs and all other
14 current and former similarly-situated and aggrieved employees for all necessary expenditures or losses
15 incurred in direct consequence of their duties. As a condition of his employment and part of their job
16 duties, Plaintiffs were required to maintain and utilize their own cellphone to access Herc's timekeeping
17 system and communicate with customers and supervisors regarding work-related issues. Plaintiffs and on
18 information and belief, all other current and former similarly-situated and aggrieved employees were not
19 reimbursed for these necessary expenses incurred for the benefit of Defendants.

20 30. Defendants failed to pay Plaintiffs and all other current and former similarly-situated and
21 aggrieved employees for all wages due and owing and by the times required by law in the time periods set
22 forth by Labor Code § 204 and Section 4 of the applicable Wage Order in that Defendants failed to
23 properly compensate said employees for all hours worked.

24 31. On information and belief, Defendants failed to pay Plaintiff and all other current and
25 former similarly-situated and aggrieved employees all wages due and owing at the time of termination of
26 employment, including, but not limited to, minimum wages, regular wages, and overtime wages, as
27 required by Labor Code §§ 201(a) and 202(a). Plaintiff RUDOLPH's employment with Defendant ended
28

1 on or about October 21, 2019, yet Defendant did not provide Plaintiff RUDOLPH with his final paycheck
2 until the next regular pay date on October 24, 2019 such that Plaintiff RUDOLPH's final payroll check
3 was not timely provided to him. Moreover, Plaintiff RUDOLPH's final paycheck, once provided, did not
4 include all remuneration owed to him, including, all earned minimum and overtime wages; all owed sick
5 leave pay, and all owed meal and rest period premiums.

6 32. Defendants have engaged in unfair business practices in California and willingly and
7 knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this
8 complaint in violation of Business & Professions Code §§ 17200, *et seq.*

9 **IV.**

10 **CLASS ACTION DESIGNATION**

11 33. Plaintiffs bring this class action pursuant to Code of Civil Procedure § 382 on behalf of all
12 current and former similarly-situated employees. The Class that Plaintiffs seeks to represent is defined as
13 follows:

14 All current and former non-exempt employees who were employed by
15 Defendants in the State of California as "sales and operations coordinators"
or jobs with similar titles at any time commencing four (4) years prior to the
filing of this Action.

16 34. As to Causes of Action One through Eight, Plaintiffs seek to recover on behalf of the Class
17 all remedies available to the extent permitted by law including, but not limited to, wages, damages,
18 penalties, liquidated damages, interest, attorney's fees, costs, other monies due and owing and injunctive
19 relief.

20 35. Causes of Action One through Eight are appropriately suited for a class action under Code
21 of Civil Procedure § 382 because:

22 a. Numerosity: The potential Class as defined is significant in size because
23 Plaintiffs are informed and believe and thereon allege that at all relevant times, Defendants employed
24 over 100 similarly-situated current and former employees who were affected by the unlawful
25 employment practices alleged herein. Based on the potential class size, joinder of all employees
26 individually would be impractical. Plaintiffs also believe that there are more than 100 people that are
27 members of the Class.
28

1 b. Commonality: This action involves common questions of law and fact particular
2 to the putative Class because the action focuses on Defendants' systematic course of illegal conduct
3 with respect to violating the Labor Codes and IWC Wage Orders and implementing company-wide
4 policies uniformly applied to all members of the putative Class. These common questions of law and
5 fact include, without limitation:

- 6 i. Whether Defendants failed to pay wages and/or overtime compensation as
7 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194,
8 1198 and 1199;
- 9 ii. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order 4-2001
10 or other applicable IWC Wage Orders, by failing to inform Plaintiffs and the
11 Putative Class of their right to take compliant off-duty rest periods and failing to
12 provide required rest periods throughout the term of employment and failing to
13 compensate said employees one (1) hours wages in lieu of rest periods;
- 14 iii. Whether Defendants violated Labor Code §§ 226.7 and 512, and IWC Wage
15 Order 4-2001 or other applicable IWC Wage Orders, by failing to authorize and
16 permit Plaintiffs and the Putative Class to take complaint, off-duty meal periods
17 throughout the term of their employment and failing to compensate said
18 employees one (1) hours wages in lieu of meal periods;
- 19 iv. Whether Defendants violated Labor Code § 226(a) and Wage Order 4-2001 or
20 other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11160
21 by failing to provide an accurate itemized wage statements that identifies all hours
22 worked and all wages earned by Plaintiffs and the Putative Class;
- 23 v. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay
24 compensation due and owing at the time that any putative Class Member's
25 employment with Defendants terminated;
- 26
27
28

vi. Whether Defendants maintained accurate records of the hours worked by Plaintiffs and the Putative Class members as required under the relevant provisions of the Labor Code; and

vii. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged.

c. Typicality: Plaintiffs' claims as alleged herein are typical of the claims of each of the putative Class because Plaintiffs were subjected to the same violations of their rights under California law and seeks the same types of damages, restitution, and other relief on the same theories and legal grounds as those of the members of the putative Class they seek to represent.

d. Adequacy of Representation: Plaintiffs are able to fairly and adequately protect the interests of all members of the putative Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation due to them for all pay, benefits and other relief afforded under the Labor Code and IWC Wage Orders. Plaintiffs' interest is not in conflict with those of the putative class members. Plaintiffs' counsel are competent and experienced in litigating large employment class actions including wage and hour cases such as this case.

e. Superiority of Class Action: Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of these claims. Each putative class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies, and/or practices as alleged herein. Class action treatment will allow those similarly-situated persons to litigate his/her claims in the manner that is most efficient and economical for the parties and the judicial system.

V.

PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

36. The Causes of Action alleged herein are appropriately suited for a Labor Code Private Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

a) This action involves allegations of violations of provisions of the California Labor Code that either do not provide for a civil penalty or provide for a civil penalty to be assessed and

collected by the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") or any departments, divisions, commissions, boards, agencies or employees;

- b) Plaintiffs MARTIN and RUDOLPH are "aggrieved employees" because they were employed by the alleged violators and had one or more of the alleged violations committed against them and, therefore, is properly suited to represent the interests of all other current and former employees of Defendants;
- c) Plaintiffs MARTIN and RUDOLPH seek to recover all applicable penalties under PAGA on behalf of themselves and all other aggrieved employees including, but not limited to, an amount sufficient to recover underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558.
- d) Pursuant to Labor Code § 2698, et seq., Plaintiffs MARTIN and RUDOLPH have complied with their notice requirements by serving via certified mail, return receipt requested, the LWDA and HERC RENTALS, INC., a notice with their claims for wage and hour violations and penalties. The PAGA claims have been tolled during the pendency of the notice period to the LWDA. The statutory period expired, and the LWDA did not serve Plaintiff MARTIN or RUDOLPH with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiffs MARTIN and RUDOLPH have satisfied and exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code § 2698, et seq.

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM AND REGULAR WAGES

(Violation of Labor Code §§ 1194, 1194.2, 1197, 1198 and the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

37. Plaintiffs reallege and incorporate by reference the foregoing allegations, as though set forth herein.

1 38. Plaintiffs and members of the Putative Class are/were “non-exempt” employees of
2 Defendants in the State of California within the meaning of the Labor Code and the applicable Wage
3 Order.

4 39. Labor Code § 1197 states “The minimum wage for employees fixed by the commission or
5 by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage
6 than minimum wage so fixed is unlawful.”

7 40. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
8 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
9 for employees. The employment of any employee for longer hours than those fixed by the order or under
10 conditions of labor prohibited by the order is unlawful.”

11 41. Section 4 of the applicable IWC Wage Order provides that an employer may not pay
12 employees less than the applicable minimum wage for all hours worked.

13 42. Labor Code § 1194 states “Notwithstanding any agreement to work for a lesser wage, any
14 employee receiving less than the legal minimum wage or the legal overtime compensation applicable to
15 the employee is entitled to recover in a civil action the unpaid balance of the full amount of his minimum
16 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

17 43. As set forth above, Plaintiffs and the members of the Putative Class were not paid all
18 minimum and regular wages for all hours worked, including but not limited to the time they worked
19 through they meal periods.

20 44. At all material times, Defendants were and/or are Plaintiffs’ and/or all other current and
21 former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of
22 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
23 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
24 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
25 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
26 to affected employees.

45. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually as employers of Plaintiffs and/or all other current and former similarly-situated and aggrieved employees, and/or a person acting on behalf of Plaintiffs and/or all other current and former similarly-situated and aggrieved employees employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiffs and/or all other current and former similarly-situated and aggrieved employees for such violations pursuant to California Labor Code § 558.1.

46. As a direct result of Defendants' violations alleged herein, Plaintiffs and the members of the putative Class have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

47. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' minimum wage violations including interest thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES

(Violation of Labor Code §§ 510, 1198 and the Applicable Wage Order)
(Alleged by Plaintiffs Individually and On Behalf of the Class Against Defendants)

48. Plaintiffs reallege and incorporate by reference the foregoing allegations, as though set forth herein.

49. Plaintiffs and members of the putative Class are/were "non-exempt" employees of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

1 50. Labor Code § 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work.
2 Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek
3 and the first eight hours worked on the seventh day of work in any one workweek shall be compensated
4 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
5 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
6 for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
7 be compensated at the rate of no less than twice the regular rate of pay of an employee.”

8 51. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
9 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
10 for employees. The employment of any employee for longer hours than those fixed by the order or under
11 conditions of labor prohibited by the order is unlawful.”

12 52. Section 3 of the applicable IWC Wage Order provides that an employer may not pay non-
13 exempt employees less than the applicable overtime rate for all overtime hours worked.

14 53. Through Defendants’ conduct during the applicable statutory period including, but not
15 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
16 to pay all Plaintiffs and the members of the Putative Class all overtime wages for all overtime worked and
17 recorded, all in violation of Labor Code §§ 510, 1198 and the applicable Wage Order.

18 54. At all material times, Defendants were and/or are Plaintiffs’ and/or all other current and
19 former similarly-situated and aggrieved employees’ ’ employers and/or persons acting on behalf of
20 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
21 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
22 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
23 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
24 to affected employees.

25 55. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
26 individually as employers of Plaintiffs and/or all other current and former similarly-situated and aggrieved
27 employees, and/or a person acting on behalf of Plaintiffs and/or all other current and former similarly-
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1 situated and aggrieved employees employer, who violated, or caused to be violated, any provision
2 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
3 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 510, 1193.6, 1194, 1198 and
4 2802, and as such, are liable as an employer of Plaintiffs for such violations pursuant to California Labor
5 Code § 558.1.

6 56. As a direct result of Defendants' violations alleged herein, Plaintiffs and the members of
7 the putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment
8 of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to
9 compel Defendants to fully perform their obligation under state law, all to their respective damage in
10 amounts according to proof at trial and within the jurisdictional limitations of this Court.

11 57. Plaintiffs seeks to recover in a civil action the unpaid balance of the full amount of the
12 unpaid wages resulting from Defendants' overtime wage violations including interest thereon, reasonable
13 attorney's fees and costs of suit, and penalties, to the fullest extent permissible including those permitted
14 pursuant to Labor Code §§ 510, 558, 1194 and 1194.2 and Code of Civil Procedure §1021.5.

15 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL PERIODS**

18 (Violation of Labor Code §§ 226.7(b), 512(a), 1198

19 and the "Meal Period" Section of the Applicable Wage Order)

20 (Alleged by Plaintiffs Individually and On Behalf of the Class Against Defendants)

21 58. Plaintiffs reallege and incorporate by reference the foregoing allegations, as though set
22 forth herein.

23 59. At all times relevant, Plaintiffs and the members of the putative Class are and/or were
24 "non-exempt" employee of Defendants in the State of California within the meaning of the Labor Code
25 and the applicable Wage Order.

26 60. Labor Code § 226.7(b) provides: "No employer shall require any employee to work during
27 any meal or rest or recovery period mandated by an applicable order of the Industrial Welfare
28 Commission."

61. Labor Code § 512(a) provides: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An 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.”

62. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

63. Section 11 of the applicable IWC Wage Order provides, in part, that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order § 11 provides that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

64. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during work periods in excess of five consecutive hours and, when applicable, when it failed to provide a second 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

65. Labor Code § 226.7(c) and the applicable IWC Wage Order § 11(D) provide that the employer shall pay an employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Defendants have not paid the appropriate meal premium wages to Plaintiffs and, and on information and belief, all other current and former similarly-situated and aggrieved employees.

66. At all material times, Defendants were and/or are Plaintiffs' and/or all other current and former similarly-situated and aggrieved employees' employers and/or persons acting on behalf of Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

67. Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of Plaintiff and/or all other current and former similarly-situated and aggrieved employees employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 512, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiffs for such violations pursuant to California Labor Code § 558.1.

68. As a direct result of Defendants' violations alleged herein, Plaintiffs and all other current and former similarly-situated and aggrieved employees have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

69. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable

1 attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted
2 pursuant to Labor Code §§ 226.7, 512, 558, 558.1, and Code of Civil Procedure § 1021.5.

3 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

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5 **FOURTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE REST PERIODS**

7 (Violation of Labor Code §§ 226.7(b), 1198,
8 and the "Rest Period" Section of the Applicable Wage Order)
(Alleged by Plaintiffs Individually and On Behalf of the Class Against Defendants)

9 70. Plaintiffs reallege and incorporate by reference the foregoing allegations, as though set
10 forth herein.

11 71. At all times relevant, Plaintiffs and the members of the Putative Class are and/or were "non-
12 exempt" employee of Defendants in California within the meaning of the Labor Code and the applicable
13 Wage Order.

14 72. Labor Code § 1198 makes the employment of any employee under conditions of labor
15 prohibited by a Wage Order unlawful.

16 73. By Order of the Industrial Welfare Commission, every employer shall authorize and permit
17 all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
18 The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
19 rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted, as
20 hours worked, for which there shall be no deduction from wages as provided in the applicable IWC Wage
21 Order.

22 74. Pursuant to Labor Code § 226.7(c) and the applicable IWC Wage Order, Defendants shall
23 pay Plaintiffs one additional hour of pay at the employees' regular rate of compensation for each day that
24 the rest period is not authorized and permitted.

25 75. Through Defendants' conduct during the applicable statutory period including the conduct
26 alleged herein, Defendants violated Labor Code §§ 226.7 and 1198 and the IWC Wage Order when they
27 failed to authorize and permit full 10-minute, uninterrupted, duty-free rest periods for every four hours
28

1 worked (or major fraction thereof) to Plaintiffs and, on information and belief, all other current and former
2 similarly-situated and aggrieved employees during the time period each employee worked for Defendants.

3 76. Defendants further have failed to pay to Plaintiffs and, on information and belief, all other
4 current and former similarly-situated and aggrieved employees the rest period wage premiums pursuant
5 to Section 226.7. Defendants' omissions in failing to pay the applicable wages set forth in Section 226.7
6 are not in good faith, and further, Defendants had no reasonable grounds for believing the omissions are
7 not in violation of the Labor Code relating to an order of the commission.

8 77. At all material times, Defendants were and/or are Plaintiffs and all other current and former
9 similarly-situated and aggrieved employees' employers or persons acting on behalf of their employer,
10 within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of
11 Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any
12 Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
13 employee as set for in Labor Code § 558 including the payment of the underpaid wages to affected
14 employees.

15 78. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
16 individually as employers of Plaintiffs, and/or a person acting on behalf of Plaintiffs and all other current
17 and former similarly-situated and aggrieved employees' employer, who violated, or caused to be violated,
18 any provision regulating minimum wages or hours and days of work in the applicable order of the
19 Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6,
20 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiffs and all other current and former
21 similarly-situated and aggrieved employees for such violations pursuant to California Labor Code § 558.1.

22 79. As a direct result, Plaintiffs and all other current and former similarly-situated and
23 aggrieved employees have suffered and continue to suffer, substantial losses related to the use and
24 enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in
25 seeking to compel Defendants to fully perform their obligation under state law, all to the respective
26 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

80. Pursuant to the Labor Code, Plaintiffs seek to recover in a civil action the unpaid balance of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558, 558.1, and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

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FIFTH CAUSE OF ACTION
FAILURE TO INDEMNIFY PLAINTIFF EXPENSES
AND LOSSES IN DISCHARGING HIS DUTIES
(Violation of Labor Code § 2802)
(Alleged by Plaintiffs against All Defendants)

81. Plaintiffs reallege and incorporate by reference the foregoing allegations, as though set forth herein.

82. At all times relevant herein, as a condition of their employment, Plaintiffs, and on information and belief, all other current and former similarly-situated and aggrieved employees were required to utilize their own supplies, including personal cell phones, to perform their job duties.

83. 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

84. At all relevant times herein, Defendants failed to reimburse Plaintiffs, and on information and belief, all other current and former similarly-situated and aggrieved employees for necessary expenditures and losses incurred in direct consequence to the discharge of their duties in violation of Labor Code § 2802. Consequently, Plaintiffs and all other current and former similarly-situated and aggrieved employees are entitled to reimbursement for expenses incurred as a result of being required to purchase, maintain and utilize their personal cell phones which were necessary to perform their job duties. Defendants, and each of them, derived and continue to derive an unjust and inequitable economic benefit by failing to comply with the sections alleged herein.

85. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and

1 individually as employers of Plaintiffs and all other current and former similarly-situated and aggrieved
2 employees, and/or a person acting on behalf of Plaintiffs and all other current and former similarly-
3 situated and aggrieved employees employer, who violated, or caused to be violated, any provision
4 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
5 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and
6 2802, and as such, are liable as an employer of Plaintiffs and all other current and former similarly-
7 situated and aggrieved employees for such violations pursuant to California Labor Code § 558.1.

8 86. As a direct result of violating Labor Code § 2802(a), Plaintiffs and all other current and
9 former similarly-situated and aggrieved employees have suffered and continue to suffer, substantial losses
10 related to such earned but unpaid wages, incurred expenses, and the use and enjoyment of earned wages,
11 lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
12 perform his obligations under the law, all in an amount to be proved at time of trial.

13 87. Labor Code § 2802(b) states “All awards made by a Court or by the Division of Labor
14 Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest
15 at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee
16 incurred the necessary expenditure or loss.” The exact amount of interest is in an amount to be proven at
17 time of trial.

18 88. Furthermore, Labor Code §2802(c) states “For the purposes of this section, the term
19 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's
20 fees incurred by the employee in enforcing the rights granted by this section.” Therefore, Plaintiffs will
21 seek to recover the amounts unreimbursed, interest, and the costs and attorney's fees he will necessarily
22 incur in pursuing same. The exact amount of reimbursements, interest, costs and attorney's fees will be in
23 an amount to be proved at time of trial.

24 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

25 **SIXTH CAUSE OF ACTION**
26 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE**
27 **ITEMIZED WAGE STATEMENTS**

28 (Violation of Labor Code §§ 226(a), 1198 and the Applicable Wage Order)
(Alleged by Plaintiffs Individually and On Behalf of the Class Against Defendants)

89. Plaintiffs reallege and incorporate by reference the foregoing allegations, as though set forth herein.

90. At all times relevant, Plaintiffs and members of the putative Class are/were an employee of Defendants within the meaning of the Labor Code and the applicable Wage Order.

91. Labor Code § 226(a) states in pertinent part “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing:

(1) Gross wages earned;

(2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; [...]

(4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

(5) Net wages earned;

(6) The inclusive dates of the period for which the employee is paid;

(7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number;

(8) The name and address of the legal entity that is the employer...;

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.... The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

92. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under

1 conditions of labor prohibited by the order is unlawful.”

2 93. The relevant IWC Wage Order § 7(A) states in relevant part that the employer shall keep
3 accurate information regarding “(3) Time Records showing when the employee begins and ends each
4 work period... (4) Total wages paid each payroll period, including value of board, lodging, or other
5 compensation actually furnished to the employee. (5) Total hours worked in the payroll period and
6 applicable rates of pay.”

7 94. Through Defendants’ conduct during the applicable statutory period including, but not
8 limited to, the conduct alleged herein, on information and belief, Defendants failed to provide Plaintiffs
9 and, on information and belief, all other current and former similarly-situated and aggrieved employees
10 accurate wage statements. For example, in addition to the derivative violations suffered by Plaintiffs and
11 all other current and former similarly-situated and aggrieved employees as a result of the other violations
12 detailed above, Defendants also failed to provide a wage statement that properly identified the number of
13 overtime hours worked and numbers of vacation and sick hours accrued.

14 95. An example of not paying the correct regular rate for overtime can also be seen on
15 Plaintiff RUDOLPH’s wage statement dated 5/24/2019 to 5/30/2019. Plaintiffs received a payment for
16 “TobCredit” which Plaintiff RUDOLPH is informed and believes is non-discretionary compensation,
17 which was not incorporated into Plaintiff RUDOLPH’s regular rate of pay for purposes of calculating
18 overtime. Instead, Plaintiff RUDOLPH was paid overtime at 1.5 times his straight time rates. This same
19 wage statement error can be seen on Plaintiff RUDOLPH’s wage statements throughout his employment
20 including but not limited to wage statements dated as follows: 3/29/2019 to 4/4/2019, 4/5/2019 to
21 4/11/2019, 4/12/2019 to 4/18/2019, 4/29/2019 to 4/25/2019, 4/26/2019 to 5/2/2019, 5/3/2019 to 5/9/2019,
22 5/10/2019 to 5/16/2019, 5/17/2019 to 5/23/2019, 5/24/2019 to 5/30/2019, 5/11/2019 to 6/6/2019, 6/7/2019
23 to 6/13/2019, 6/14/2019 to 6/20/2019, 6/21/2019 to 6/27/2019, 6/28/2019 to 7/4/2019, 7/5/2019 to
24 7/11/2019, 7/12/2019 to 7/18/2019, 7/19/2019 to 7/25/2019, 7/26/2019 to 8/1/2019, 9/2/2019 to 8/8/2019,
25 8/9/2019 to 8/15/2019, 8/16/2019 to 8/22/2019, 8/23/2019 to 8/29/2019, 8/30/2019 to 9/5/2019, 9/6/2019
26 to 9/12/2019, 9/13/2019 to 9/19/2019, 9/20/2019 to 9/26/2019

27 96. Plaintiffs and all other current and former similarly-situated and aggrieved employees
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1 suffered injuries as a result of Defendants' intentional and knowing failure to provide and maintain the
2 writings required by Labor Code § 226(a) and the IWC Wage Orders. Defendants' failure to provide and
3 maintain accurate statements left Plaintiffs and all other current and former similarly-situated and
4 aggrieved employees without the ability to know, understand, and question the hours worked and wages
5 earned and due. As a direct result, Plaintiffs and all other current and former similarly-situated and
6 aggrieved employees have suffered and continue to suffer substantial injuries, losses and actual damages
7 related to Defendants' violations, including lost wages, lost interest on such wages, and expense and
8 attorney's fees in seeking to compel Defendants to fully perform their obligations.

9 97. Furthermore, Plaintiff RUDOLPH was not provided legally compliant meal periods
10 and therefore was not properly compensated for missed meal periods. Even where on the rare occasion
11 when a meal period penalty was provided, such as on the wage statement dated 4/19/2019 to 4/25/2019,
12 that penalty was paid at Plaintiff RUDOLPH's straight time rate of \$26.50 but did not include the
13 TobCredit earned and stated on the face of the wage statement into the regular rate for payment of the
14 meal period penalty.

15 98. Additionally, on their face, the Defendant did not list the correct name of the employer.
16 On all of Plaintiff RUDOLPH's wage statements, the employer name is listed as Herc Companies instead
17 of the actual employer name of Herc Rentals, Inc.

18 99. As a result of Defendant's violations of various Labor Code and Wage Order
19 provisions, as alleged above, including but not limited to Defendant's unlawful time-rounding policies
20 and practices, incorrect calculation of Plaintiff and class members' regular rate for purposes of overtime
21 as well as failure to pay all due meal and rest period premiums, Defendant failed to provide Plaintiff and
22 the class members with accurate wage statements in violation of Labor Code section 226.

23 100. Labor Code § 226(e)(1) states "An employee suffering injury as a result of a knowing and
24 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all
25 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
26 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate
27 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
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1 fees.” Labor Code §226(e)(2)(B) states “An employee is deemed to suffer injury for purposes of this
2 subdivision if the employer fails to provide accurate and complete information as required by any one or
3 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
4 determine from the wage statement alone one or more of the following: (i) The amount of gross wages or
5 net wages paid to the employee during the pay period or any other information required to be provided on
6 the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...”
7 Because Plaintiff at times did not receive any wage statements, or the wage statements did not include,
8 among other things, an accurate accounting of gross wages earned or total hours worked he is deemed to
9 have suffered injury.

10 101. Labor Code § 226(h) states “An employee may also bring an action for injunctive relief to
11 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

12 102. At all material times, Defendants were and/or are Plaintiffs’ and/or all other current and
13 former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of
14 Defendants within the meaning of Labor Code § 558, who violated or caused to be violated, a section of
15 Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any
16 Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
17 employee as set forth in Labor Code § 558 including the payment of the underpaid wages to affected
18 employees.

19 103. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
20 individually as employers of Plaintiffs, and all other current and former similarly-situated and aggrieved
21 employees, and/or a person acting on behalf of Plaintiffs and all other current and former similarly-
22 situated and aggrieved employees’ employer, who violated, or caused to be violated, any provision
23 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
24 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and
25 2802, and as such, are liable as an employer of Plaintiffs for such violations pursuant to California Labor
26 Code § 558.1.

27 104. As a direct result of Defendants’ violations alleged herein, Plaintiffs and all other current
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1 and former similarly-situated and aggrieved employees have suffered and continue to suffer injury
2 including substantial losses related to the use and enjoyment of such wages, lost interest on such monies
3 and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under
4 state law, all to the respective damage in amounts according to proof at trial and within the jurisdictional
5 limitations of this Court.

6 105. Plaintiffs seek to recover in a civil action all remedies including damages, unpaid wages,
7 penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those
8 permitted pursuant to Labor Code §§ 226(e) and (h), 558, 558.1, and Code of Civil Procedure § 1021.5.

9 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

10 **SEVENTH CAUSE OF ACTION**
11 **FAILURE TO TIMELY PAY WAGES DUE**
12 **DURING AND UPON SEPARATION OF EMPLOYMENT**

13 (Violation of Labor Code §§ 201(a), 202(a), 203, and 204(a))
14 (Alleged by Plaintiffs Individually and On Behalf of the Class Against Defendants)

15 106. Plaintiffs reallege and incorporate by reference the foregoing allegations, as though set
16 forth herein.

17 107. Plaintiffs and members of the Class are/were "non-exempt" employees of Defendants
18 within the meaning of the Labor Code and the applicable Wage Order.

19 108. Labor Code § 201(a) states "If an employer discharges an employee, the wages earned and
20 unpaid at the time of discharge are due and payable immediately."

21 109. Labor Code § 202(a) states "If an employee not having a written contract for a definite
22 period quits his or her employment, his or her wages shall become due and payable not later than 72 hours
23 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which
24 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
25 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive
26 payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall
27 constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the
28 notice of quitting."

1 110. Labor Code section 204(a) states in pertinent part, “All wages . . . earned by any person in
2 any employment are due and payable twice during each calendar month, on days designated in advance
3 by the employer as the regular paydays.”

4 111. On information and belief, Defendants willfully failed to provide members of the Class
5 with all wages due and owing, including minimum wages, overtime wages, regular wages, by the time
6 specified by Labor Code §§ 201(a), 202(a), and 204 (a) as applicable.

7 112. Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay, without
8 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an
9 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the
10 due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
11 not continue for more than 30 days.”

12 113. At all material times, Defendants were and/or are Plaintiffs’ and/or all other current and
13 former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of
14 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
15 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
16 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
17 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
18 to affected employees.

19 114. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
20 individually as employers of Plaintiffs and all other current and former similarly-situated and aggrieved
21 employees, and/or a person acting on behalf of Plaintiffs and all other current and former similarly-situated
22 and aggrieved employees’ employer, who violated, or caused to be violated, any provision regulating
23 minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission,
24 as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802, and as such,
25 are liable as an employer of Plaintiffs and all other current and former similarly-situated and aggrieved
26 employees for such violations pursuant to California Labor Code § 558.1.

115. As a direct result of Defendants' violations alleged herein, Plaintiffs and members of the putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

116. Plaintiffs seek to recover in a civil action all remedies to the fullest extent permissible including those permitted pursuant to Labor Code § 203.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.

(Alleged by Plaintiffs Individually and On Behalf of the Class Against Defendants)

117. Plaintiffs reallege and incorporate by reference the foregoing allegations, as though set forth herein.

118. Business & Professions Code § 17200 states "As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

119. Through Defendants' conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have engaged in business practices in California by practicing, employing, and utilizing, the employment practices outlined in the preceding paragraphs all in violation of California law and the Industrial Welfare Commission Wage Orders. Defendants' use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants' competitors doing business in the State of California that comply with their obligations to properly provide employment conditions in compliance with the law and pay employees for all earned wages and compensation as required by law.

120. Defendants' violations of the Labor Code and the Industrial Welfare Commission Wage Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business practices because these actions were done in a systematic manner over a period of time to the detriment of Plaintiffs

1 and the Class. The acts complained of herein occurred within the last four (4) years preceding the filing
2 of this complaint and include, but are not limited to, failure to (i) pay proper minimum, overtime, and
3 regular wages; (ii) pay timely wages during and upon separation of employment; (iii) maintain accurate
4 records and provide and maintain accurate itemized wage statements; (iv) provide compliant meal and
5 rest breaks; and (v) provide proper hiring and commission/bonuses documents to employees during their
6 employment.

7 121. Plaintiffs are informed and believes and on that basis alleges that, at all times herein
8 mentioned, Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair
9 business practices prohibited by California Business and Professions Code §§ 17200, *et seq.*, including
10 those set forth in the preceding paragraph, thereby depriving Plaintiffs and the Class the minimum working
11 condition standards and conditions due, including those under California Labor Code and Wage Order of
12 the Industrial Welfare Commission.

13 122. As a result of Defendants' unfair competition as alleged herein, Plaintiffs have suffered
14 injury in fact and lost money or property. Plaintiffs have been deprived of the rights to wages and benefits
15 due as alleged herein.

16 123. Pursuant to California Business & Professions Code § 17203, Plaintiffs are entitled to seek
17 restitution of all wages and other monies owed on behalf of themselves and the represented employees
18 belonging to them, including interest thereon, which Defendants wrongfully withheld from them and
19 retained for themselves by means of its unlawful and unfair business practices.

20 124. Plaintiffs are entitled to an injunction and other declaratory and equitable relief against
21 such practices to prevent future damage for which there is no adequate remedy at law, and to avoid a
22 multiplicity of lawsuits.

23 125. Plaintiffs are informed and believes, and on that basis, alleges, that the illegal conduct
24 alleged herein is continuing and there is no indication that Defendants will not continue such activity into
25 the future. Plaintiffs allege that if Defendants are not enjoined from the conduct set forth in this Complaint,
26 they will continue to fail to pay the wage and compensation required to be paid and will fail to comply
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1 with other requirements of the California Labor Code and Wage Order of the Industrial Welfare
2 Commission.

3 126. As a direct and proximate result of Defendants' conduct, Defendants have received and
4 will continue to receive monies that rightfully belong to members of the general public who have been
5 adversely affected by Defendants' conduct, as well as to Plaintiffs by virtue of unpaid wages and other
6 monies.

7 127. Plaintiffs are entitled and seeks any and all available remedies including restitution and
8 recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5, Business
9 and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

10 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

11 **NINTH CAUSE OF ACTION**
12 **PRIVATE ATTORNEY GENERAL ACT (PAGA)**

13 (Violation of Labor Code § 2699, *et seq.*)
14 (Alleged by Plaintiffs Individually and On Behalf of all current and former Aggrieved Employees
15 Against All Defendants)

16 128. Plaintiffs MARTIN and RUDOLPH reallege and incorporate by reference the foregoing
17 allegations, as though set forth herein.

18 129. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil
19 penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions,
20 boards, agencies or employees for violation of the code may, as an alternative, be recovered through a
21 civil action brought by an aggrieved employee on behalf of themselves or themselves and other current or
22 former employees pursuant to the procedures specified in Labor Code § 2699.3.

23 130. Plaintiffs MARTIN and RUDOPH are "aggrieved employees" because they were employed
24 by the alleged violator and had one or more of the alleged violations committed against them and therefore
25 are properly suited to represent the interests of other current and former aggrieved employees of
26 Defendant.

27 131. On or about March 5, 2020 pursuant to Labor Code § 2698, *et seq.*, Plaintiff MARTIN
28 served via certified mail, return receipt requested DEFENDANT, Herc Rentals, Inc., and, on March 4,
2020, via on-line services the LWDA with his claims for wage and hour violations and penalties. The

1 statutory period expired, and the LWDA did not serve Plaintiff with a notice of intent to assume
2 jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and exhausted the
3 procedural notice requirement to pursue penalties against Defendant pursuant to Labor Code §2698, *et*
4 *seq.*

5 132. Plaintiff RUDOLPH complied with the procedures for bringing suit specified in
6 Labor Code sections 2699.3 and 2699.5. by letter dated November 21, 2019. Plaintiff RUDOLPH gave
7 written notice to the LWDA via electronic mail at PAGAFilings@dir.ca.gov, and via certified
8 mail to all Defendants, of the specific provisions of the Labor Code and Wage Orders allegedly violated,
9 including the facts and theories to support the alleged violations. . As of the filing of this complaint, the
10 LWDA has not provided the parties any notice of its intention to investigate Plaintiff RUDOLPH's
11 claims on behalf of himself and other aggrieved employees.

12 133. Labor Code § 1198 states "The maximum hours of work and the standard conditions of
13 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
14 for employees. The employment of any employee for longer hours than those fixed by the order or under
15 conditions of labor prohibited by the order is unlawful."

16 134. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide Plaintiffs
17 and current and former aggrieved employees lawfully complaint meal periods and by failing to pay them
18 wages for each day a meal period was not provided. Under Labor Code § 2699 (f)(2) Defendants are
19 subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and
20 \$200 for each aggrieved employee per pay period for each subsequent violation.

21 135. Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide Plaintiffs and
22 current and former aggrieved employees duty-free rest periods and by failing to pay them premium wages
23 for each day a rest period was not provided. Under Labor Code § 2699(f)(2) Defendants are subject to a
24 civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each
25 aggrieved employee per pay period for each subsequent violation.

26 136. Defendants violated Labor Code §§ 1194, 1197, and 1198 by failing to pay Plaintiffs and
27 current and former aggrieved employees at least minimum and regular wages for the time permitted to
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1 work, engaged in work, and/or under Defendants' control as alleged herein. Under Labor Code § 2699
2 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an
3 initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

4 137. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiffs and current
5 and former aggrieved employees overtime wages for the time permitted to work, engaged in work, and/or
6 under Defendants' control as alleged herein. On information and belief, at all relevant times, Plaintiffs
7 and other current and former aggrieved employees were not paid overtime wages when they worked in
8 excess of eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor Code §
9 2699 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period
10 for an initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

11 138. Labor Code §§ 226(a), 1174(d), and 1198 and Section 6 of the applicable IWC Wage Order
12 by failing to maintain records detailing the start and end times of work shifts and meal periods, and
13 knowingly and intentionally failing to maintain and provide Plaintiffs and other current and former
14 aggrieved employees of Defendants with accurate wage statements itemizing all information required by
15 Labor Code § 226(a), as alleged herein, including the correct total hours worked, all regular hours worked,
16 overtime hours worked, the correct applicable hourly rate per hour worked, the and the correct total wages
17 earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
18 aggrieved employee per pay period for the initial violation of Labor Code §§ 226(a) and 1198, and \$200
19 for each aggrieved employee per pay period for each subsequent violation.

20 139. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per
21 violation in an initial citation and \$1,000 for each violation in a subsequent citation for failure to provide
22 accurate itemized wage statements.

23 140. Under Labor Code § 1174.5 an employer who willfully fails to maintain the records by
24 Labor Code § 1174 is a subject to a civil penalty of \$500.

25 141. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay Plaintiffs and
26 other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all
27 meal and rest premiums wages owed by the time set forth by law upon their separation of employment as
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1 alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for
2 each aggrieved employee per pay period for the initial violation of Labor Code §§ 201, 202, 203, and
3 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

4 142. Defendants violated Labor Code §§ 204 and 1198 by failing to pay Plaintiffs and other
5 current and former aggrieved employees all minimum, regular, and overtime wages owed, and all meal
6 and rest premiums wages owed by the time set forth by law upon during their employment as alleged
7 herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
8 aggrieved employee per pay period for the initial violation of Labor Code §§ 204 and 1198, and \$200 for
9 each aggrieved employee per pay period for each subsequent violation.

10 143. As set forth herein, Defendant violated Labor Code sections 201, 202, 203, 204, 223, 226,
11 226.7, 510, 512, 1174, 1197, 1198, 2810.5 and Labor Code § 2699, *et seq.*, imposes upon Defendants, and
12 each of them, penalties for violating the Labor Code, including those penalties set forth in 210, 226.3, 256,
13 558, 1174.5, 1197.1, 1194.2 and 2698, *et seq.*

14 144. Pursuant to Labor Code § 2699, Plaintiffs MARTIN and RUDOLPH seek to recover civil
15 penalties on behalf of themselves and other current and former aggrieved employees of Defendant who
16 suffered one or more the labor code violations described herein. The exact amount of the applicable
17 penalty is all in an amount to be shown according to proof at trial.

18 145. For bringing this action, Plaintiffs MARTIN and RUDOLPH are entitled to attorney's fees
19 and costs incurred herein.

20 WHEREFORE, Plaintiffs MARTIN and RUDOLPH pray for relief as hereinafter requested.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for damages for judgment against Defendants, jointly and severally, as applicable, as follows:

- a. For injunctive relief as provided by the Labor Code and to the extent permitted by law including, but not limited to, pursuant to § 226(h) and Business and Professions Code §17200, *et seq.* and including injunctive relief to compel Defendants to produce all records as required by § 226(h) and the “Records” section of the applicable IWC wage order;
- b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- c. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
- d. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), 226.3, 210, 226.8, 558, and 1174.5, and PAGA penalties pursuant to Labor Code §2698 *et seq.*;
- e. For an award of unpaid wages, including regular wages, minimum and overtime wages, to the extent permissible by law to each affected person;
- f. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), and 558.1 penalties;
- g. For an award of actual damages to the extent permissible by the Labor Code including Labor Code § 226(e);
- h. For an award of liquidated damages to the extent permissible by Labor Code §1194.2;
- i. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;

j. For reasonable attorney's fees and cost of suit and, to the extent permitted by law, including pursuant to Labor Code §§ 218.5, 226, 1194, 2698 et seq. and Code of Civil Procedure § 1021.5; and

k. An award of such other and further relief as this Court deems proper and just.

Dated:

ShortLegal, APC
CROSNER LEGAL, PC

By: _____

BRIAN R. SHORT
DOROTA A. JAMES
ZACH CROSNER
JAMIE SERB
Attorneys for Plaintiffs HECTOR MARTIN and
ERIK RUDOLPH

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury to the extent authorized by law.

Dated:

ShortLegal, APC
CROSNER LEGAL, PC

By: _____

BRIAN R. SHORT
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EXHIBIT B(1)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

HECTOR MARTIN and ERIK RUDOLPH,
Individually and on behalf of all similarly-
situated employees of Defendants in the State
of California,

Plaintiffs,

v.

HERC RENTALS, INC and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2020-00016112-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

FIRST-SECOND AMENDED COMPLAINT

CLASS ACTION [CCP § 382]

1. Failure to Pay Minimum and Regular Wages
2. Failure to Pay Overtime Wages
3. Failure to Authorize and Permit Rest Periods
4. Failure to Provide Meal Periods
5. Failure to Indemnify/Reimburse Expenses
6. Failure to Provide and Maintain Accurate Itemized Wage Statements
7. Failure to Timely Pay Wages Due Upon Separation of Employment
8. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
9. PAGA Claims for Civil Penalties

Date Complaint Filed: March 16, 2020
Judge: Ronald F. Frazier
Dept.: C-65

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7 Attorneys for Plaintiff ERIK RUDOLPH

1 Plaintiff~~s~~ HECTOR MARTIN and ERIK RUDOLPH on behalf of himself themselves and all other
2 current and former similarly-situated and aggrieved employees alleges as follows:

3 I.

4 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

5 1. Plaintiff~~s~~ HECTOR MARTIN (hereinafter “MARTIN”) and ERIK RUDOLPH
6 (hereinafter “RUDOLPH”) (collectively referred to as “Plaintiffs”) brings this individual and class action
7 suit against Defendant HERC RENTALS, INC. (“HERC”) and DOES 1 through 50, inclusive
8 (collectively referred to herein as “Defendants”), on behalf of himself themselves and all other current
9 and former similarly-situated and aggrieved employees for engaging in a systemic pattern of wage and
10 hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

11 2. HERC RENTALS, INC. is a full-service equipment rental firm with approximately 270
12 company-operated locations primarily in the United States and Canada, including San Diego County,
13 California.

14 3. MARTIN, at times relevant, was employed by Defendants as sales and operations
15 coordinator in San Diego, California. RUDOLPH, at all times relevant, was employed by Defendants as
16 a driver, delivering rental equipment throughout the greater Sacramento area.

17 4. Plaintiff~~s~~ is are informed and believes, and thereon alleges, that Defendants decreased their
18 employment-related costs in order to increase their level of productivity and profits by systematically
19 violating both state wage and hour laws and the applicable IWC Wage Order, including, but not limited
20 to:

- 21 a. Failing to pay for minimum, regular and overtime wages for all hours worked;
- 22 b. Failing to provide compliant meal and rest breaks;
- 23 c. Failing to indemnify Plaintiff~~s~~ and all other current and former similarly-situated
24 and aggrieved employees for their necessary expenses and losses in discharging
25 their duties;
- 26 d. Failing to provide and maintain accurate records and itemized wage statements;
- 27 and

e. Failing to timely pay wages due during and upon termination of employment.

5. Plaintiff~~s~~ brings~~s~~ this lawsuit seeking injunctive, restitution and monetary relief against Defendants, and each of them, on behalf of Plaintiff~~s~~ individually and on behalf of all other current and former similarly-situated and aggrieved employees to recover, among other things, unpaid wages and benefits, interest, penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.7, 247, 248.5, 510, 511, 512, 558, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2810.5, Labor Code § 2699, and California Code of Civil Procedure 1021.5, and provisions of the applicable IWC Wage Order. Plaintiff~~s~~ reserves~~s~~ the right to name additional representatives throughout the State of California.

II.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff MARTIN is and at all relevant times was a resident of the State of California and was employed by Defendants in their San Diego office, California. Plaintiff RUDOLPH is and at all relevant times was a resident of the State of California and was employed by Defendants in the Sacramento area.

7. Defendant HERC RENTALS, INC. ("HERC"), is a full-service equipment rental firm with approximately 270 company-operated locations primarily in the United States and Canada, including business offices in San Diego, California.

8. Plaintiff~~s~~ is-are informed and believes~~s~~, and thereon alleges~~s~~, that at times relevant HERC RENTALS, INC. and Does 1 through 50 are the alter egos of each other and directly or indirectly, or through agents or other persons, employed Plaintiff~~s~~ and all other current and former similarly-situated and aggrieved employees, and exercised control over their wages, hours, and/or working conditions. Plaintiff~~s~~ is-are informed and believes~~s~~, and thereon alleges~~s~~, that each Defendants directly or indirectly, or through agents or other persons, acted and/or ratified in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

10. Defendants, at all relevant times, conducted business in the State of California and were employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and or 558.1.

11. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiffs. Plaintiffs will amend this Complaint setting forth the true names and capacities of these fictitious Defendants when they are ascertained. Plaintiffs ~~is~~are informed and believess, and on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

12. Jurisdiction and venue are proper for San Diego County Superior Court because Defendants maintain offices, transact business, and/or have an agent in San Diego County and some of the acts and events complained of herein occurred in the judicial district of San Diego County and the State of California.

GENERAL ALLEGATIONS

13. Plaintiff MARTIN was employed by Defendants as sales and operations coordinator since April 7, 2017 to February 28, 2020 when he was terminated for an alleged violation of the company policy regarding use of company's vehicle. During his employment with HERC, Mr. Martin was classified as a non-exempt employee and denied the protections afforded to him pursuant to the California Labor Code. He worked at HERC's store located in San Diego, California.

1 13.14. Plaintiff RUDOLPH was employed by Defendants in Sacramento, California as a non-
2 exempt, hourly-paid driver, delivering rental equipment from on or about February 25, 2019 to October
3 1, 2019. Plaintiff RUDOLPH typically worked shifts over ten hours, with most shifts in excess of twelve
4 hours.

5 14.15. Defendant HERC RENTALS, INC. is an employer doing business in the State of California
6 and, according to its website HERC is a full-service equipment rental firm operating its business primarily
7 in the United States and Canada.

8 15.16. At all relevant times, Plaintiffs, and on information and belief, all other current and former
9 similarly-situated and aggrieved employees worked under numerous illegal policies, practices, and
10 procedures of Defendants relating to its payment of wages, meal and rest periods, wage statements,
11 recordkeeping, and reimbursement policies. Defendants failed to pay all regular, minimum and overtime
12 wages to Plaintiffs and on information and belief, all other current and former similarly-situated and
13 aggrieved employees as a result of Defendants' unlawful policies and practices.

14 16.17. During his tenure with Defendants, Plaintiffs and all other current and former similarly-
15 situated and aggrieved employees were often employed through various illegal policies designed by
16 Defendants to systematically reduce their costs of doing business at the expense of its employees.

17 17.18. At all relevant times, Plaintiffs and all other current and former similarly-situated and
18 aggrieved employees were non-exempt hourly employees and eligible to earn non-discretionary bonuses
19 and commissions based on sales and performance.

20 19. At all relevant timess, Plaintiffs and all other current and former similarly-situated and
21 aggrieved employees regularly worked more than 8 hours in workday and/or more than forty (40) hours
22 in a workweek. Plaintiffs and all other current and former similarly-situated and aggrieved employees also
23 routinely earned non-discretionary bonuses and commissions during the same pay periods in which they
24 worked overtime. Plaintiffs alleges that Defendants failed to properly incorporate ~~his~~-their non-
25 discretionary bonuses into ~~his~~-their regular hourly rate of pay for the purpose of calculating ~~his~~-their
26 overtime rate, as required by California law. For example, there were pay periods during which Plaintiff
27 RUDOLPH received non-discretionary remunerations such as "TobCredi," "IEL," however the overtime
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1 rate for those pay periods did not incorporate those non-discretionary remunerations into the regular pay
2 rate for purposes of calculating the owed overtime rate as required by law. For example, in the same pay
3 period of 5/24/2019 to 5/30/2019, Plaintiff RUDOLPH was compensated his overtime at a rate of \$39.75
4 per hour, which is precisely 1.5 times his regular rate of pay of \$26.50 per hour. During this same pay
5 period, Plaintiff RUDOLPH alleges that he was compensated non-discretionary remunerations, including
6 TobCredi of \$2.88 and IEL of .17, which were not incorporated into the regular rate of pay for purposes
7 of calculating the overtime rate of pay. As a result, the overtime rate that Defendants paid Plaintiff~~s~~ was
8 miscalculated and incorrect and Plaintiff~~s~~ and other employees were routinely underpaid.

9 20. Additionally, Defendant at times paid Plaintiff RUDOLPH multiple rates of pay in one
10 pay period for the same kind of work, but failed to average the rates of pay when calculating overtime.
11 Under California law, “[w]here two rates of pay are paid during a workweek, the California method for
12 determining the regular rate of pay for calculating overtime in that workweek mirrors the federal method,
13 based upon the weighted average of all hourly rates paid.” DLSE Manual 49.2.5 (citing 29 CFR §
14 778.115). This “weighted average” method provides, “[w]here an employee in a single workweek works
15 at two or more different types of work for which different non-overtime rates of pay (of not less than the
16 applicable minimum wage) have been established, their regular rate for that week is the weighted average
17 of such rates. That is, the total earnings (except statutory exclusions) are computed to include his
18 compensation during the workweek from all such rates, and are then divided by the total number of hours
19 worked at all jobs. . .” 29 CFR § 778.115. Employer’s failure to average the rates of pay when calculating
20 overtime resulted in underpaid overtime at times, as well as inaccurate and incomplete wage statements.
21 For example, in the pay period of 6/14/2019 to 6/20/2019, Plaintiff RUDOLPH was compensated with
22 two rates of pay, his regular rate of \$26.50 per hour and a second rate of pay for “OETBL” at \$53.04 per
23 hour. However, the 11.07 hours of overtime worked were paid at rate of \$39.75 per hour, which is
24 precisely 1.5 times his regular rate of pay of \$26.50 per hour, and thus failed to incorporate the .25 hours
25 of OETBL at \$53.04 when calculating the overtime rate of pay for this pay period.

26 21. At all relevant times, Defendant did not compensate Plaintiff~~s~~ for all hours worked by
27 virtue of, among other things, required to perform off-the-clock work by virtue of Defendant’s time-
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1 shaving/time-rounding policy. Defendant maintained and continues to maintain a policy and practice of
2 time-shaving/time-rounding requiring its employees, including Plaintiffs, to "round" the start and stop
3 times of their hours worked and/or only input their scheduled start and stop times, rather than actual hours
4 worked. For example, in the pay period of 5/24/2019 to 5/30/2019, Plaintiff RUDOLPH's wage statement
5 reflects that he was paid for 24 regular hours of work, and 4.1 hours of overtime. However, Plaintiff
6 RUDOLPH alleges that in actuality he worked nearly approximately 38 hours during the pay period, but
7 was significantly undercompensated as a result of Defendant's time-shaving/time-rounding policy and
8 practice. As shown, Defendant's time-shaving/time-rounding policies and practices as applied worked to
9 detrimentally shave and round time off from Plaintiff RUDOLPH's workdays. Plaintiffs allege on
10 information and belief that through the operation of Defendant's time-shaving/time-rounding system,
11 Plaintiffs would systematically be deprived of compensable time because the time-recording system
12 implemented by Defendant would almost always, if not always, understate actual compensable work time.
13 Upon information and belief, Defendant had actual or constructive knowledge that its time reporting/ time-
14 rounding policy resulted in underpaying Plaintiffs the wages he was owed. This time-shaving system,
15 implemented by and through Defendant, resulted in record-keeping violations as well as violations of
16 California's minimum and overtime wage laws. Additionally, Defendants required Plaintiffs to clock out
17 thirty minutes per shift despite having actual and/or constructive knowledge that Plaintiffs did not receive
18 compliant, uninterrupted, off-duty meal periods, resulting in underpayment of minimum wages and
19 overtime pay.

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23 18. —

24 22. At all relevant times, Defendants did not maintain compliant off-duty meal period policies
25 for Plaintiff^s as required by the California Labor Code, nor did they provide meal periods compliant under
26 California law, to Plaintiff^s and other employees. Defendants failed to adequately inform Plaintiff^s and

1 all other current and former similarly-situated and aggrieved employees of their rights to take compliant
2 off-duty meal periods.

3 ~~19.——Plaintiffs were not always provided proper meal periods during their employment.~~
4 ~~Plaintiffs were often forced to take late meal periods due to their workload/commentary from supervisors~~
5 ~~pressuring Plaintiffs to take late or otherwise improper meal periods. Plaintiff RUDOLPH was pressured~~
6 ~~by his supervisors to not make any stops while driving his routes and was at times told to eat any meals~~
7 ~~while driving, in order to ensure that deliveries were made timely. Plaintiff RUDOLPH was also required~~
8 ~~to monitor dispatch and/or cell phones during his meal periods, rendering these meal periods to be on-~~
9 ~~duty. Plaintiff RUDOLPH did not execute to a written on-duty meal period waiver agreement. Plaintiff~~
10 ~~RUDOLPH did not receive premium pay for these interrupted, cut short, missed, late and/or on-duty meal~~
11 ~~periods. Additionally, Plaintiff RUDOLPH was never provided with a second meal period when working~~
12 ~~shifts in excess of ten and/or twelve hours, and was never compensated a meal premium in lieu of these~~
13 ~~meal periods. For example, in the pay period of 6/14/2019 to 6/20/2019, Plaintiff RUDOLPH worked~~
14 ~~approximately two shifts in excess of 12 hours, and two additional shifts in excess of 10 hours, without~~
15 ~~being provided any second meal periods, and did not receive a meal period premium for these missed~~
16 ~~second meal periods. In fact, Plaintiff RUDOLPH never once received a second meal period in any shifts,~~
17 ~~and was never paid a second meal period premium.~~

18 ~~23.——~~

19 ~~20.~~ Defendants failed to pay Plaintiff~~s~~ and all other current and former similarly-situated and
20 aggrieved employees meal period premium wages for each day in which they did not provide Plaintiff~~s~~
21 and other current and former similarly-situated and aggrieved employees an opportunity to take a
22 compliant meal period. ~~Defendants also failed to pay Plaintiff RUDOLPH an additional hour of wages at~~
23 ~~his rate of pay for each workday a meal period was not provided and/or any meal period premium paid~~
24 ~~was improper due to Defendant's failure to incorporate all non-discretionary remuneration and rates of~~
25 ~~pay into the regular pay rate for purposes of calculating the owed premium. For example, in the pay period~~
26 ~~of 6/14/2019 to 6/20/2019, Defendant compensated Plaintiff RUDOLPH one meal break premium at his~~
27 ~~regular rage of pay of \$26.50. This premium rate of pay failed to incorporate all non-discretionary~~

1 remunerations and additional rates of pay/shift differentials, including a TobiCred in an amount of \$2.88,
2 an IEL in an amount of .17, and a OTDBL of .25 hours at a rate of \$53.04.

3 24.

4 21-25. At all times relevant, Defendants did not maintain compliant off-duty rest period
5 policies for Plaintiff~~s~~ and all other current and former similarly-situated and aggrieved employees as
6 required by the California Labor Code, nor did they provide rest periods compliant under California law,
7 to Plaintiff~~s~~ and other employees. During Plaintiff~~s~~'s employment, Defendants had a common pattern and
8 practice of failing to properly authorize and permit compliant off-duty rest periods to Plaintiff~~s~~ and other
9 all other current and former similarly-situated and aggrieved employees when they worked greater than
10 3.5 hours in a workday. Plaintiff RUDOLPH did not receive compliant, timely 10 (ten)- minute rest
11 periods every four (4) hours or major fraction thereof. Plaintiff was typically required to work through
12 his rest periods or any purported rest periods would be on-duty/interrupted/cut short due to the nature and
13 constraints of his job duties and commentary from supervisors to take late/shorter breaks than they were
14 entitled to or no breaks at all. Plaintiff RUDOLPH was also forced to remain on duty throughout the
15 duration of his shifts, including during any purported rest periods, as Defendants required Plaintiff
16 RUDOLPH to always monitor his cell phones for purposes of communicating with dispatch. Management
17 pressured Plaintiff to RUDOLPH stay on their assigned routes and insisted Plaintiff RUDOLPH not take
18 rest periods. Also, Defendant did not authorize or permit Plaintiff RUDOLPH to take a third rest period
19 in shifts in excess of 10 hours. Plaintiff RUDOLPH was not paid rest period premiums for these
20 missed/improper rest periods. For example, in the pay period of 6/14/2019 to 6/20/2019, Plaintiff
21 RUDOLPH worked approximately 4 shifts in excess of 10 hours and alleges he did not receive any third
22 rest periods, nor did he receive rest period premium pay in lieu of these missed rest periods. Defendant
23 failed to furnish Plaintiff RUDOLPH with complete and accurate wage statements in compliance with
24 Labor Code section 226. Among other things, Plaintiff RUDOLPH's wage statements did not accurately
25 reflect, the total gross and net wages earned, including, all earned minimum and overtime wages; all owed
26 sick leave pay; and all owed meal and rest period premiums for the pay period. Also, Defendant's wage

1 statements did not accurately reflect all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate.

3 22-26. Defendants failed to pay Plaintiff~~s~~ and other all other current and former similarly-situated
4 and aggrieved employees rest period premium wages for each day in which they did not authorize or
5 permit them to take compliant rest periods.

6 23-27. At all times relevant, Defendants failed to provide Plaintiff~~s~~ and all other current and
7 former similarly-situated and aggrieved employees with wage statements that truly and accurately
8 reflected the wages due to them, specifically including but not limited to the proper number of overtime
9 hours worked during the period in which a non-discretionary bonus was earned. As a result, the proper
10 amount of wages was not properly calculated and accounted for as required by Labor Code § 226(a) and
11 Section 7 of the applicable Wage Order.

12 24-28. As a result of these deficiencies and inaccuracies, Plaintiff~~s~~ and other all other current and
13 former similarly-situated and aggrieved employees were not able to promptly and easily determine from
14 this wage statements alone their total overtime and/or all wages earned.

15 25-29. Defendants further had a policy and practice of failing to indemnify Plaintiff~~s~~ and all other
16 current and former similarly-situated and aggrieved employees for all necessary expenditures or losses
17 incurred in direct consequence of their duties. As a condition of his employment and part of ~~his~~their job
18 duties, Plaintiff~~s~~ ~~were~~ was required to maintain and utilize ~~his~~their own cellphone to access Herc's
19 timekeeping system and communicate with customers and supervisors regarding work-related issues.
20 Plaintiff~~s~~ and on information and belief, all other current and former similarly-situated and aggrieved
21 employees were not reimbursed for these necessary expenses incurred for the benefit of Defendants.

22 26. Defendants failed to pay Plaintiff~~s~~ and all other current and former similarly-situated and
23 aggrieved employees for all wages due and owing and by the times required by law in the time periods set
24 forth by Labor Code § 204 and Section 4 of the applicable Wage Order in that Defendants failed to
25 properly compensate said employees for all hours worked.

26 30.
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1 27:31. On information and belief, Defendants failed to pay Plaintiff and all other current and
2 former similarly-situated and aggrieved employees all wages due and owing at the time of termination of
3 employment, including, but not limited to, minimum wages, regular wages, and overtime wages, as
4 required by Labor Code §§ 201(a) and 202(a). Plaintiff RUDOLPH's employment with Defendant ended
5 on or about October 21, 2019, yet Defendant did not provide Plaintiff RUDOLPH with his final paycheck
6 until the next regular pay date on October 24, 2019 such that Plaintiff RUDOLPH's final payroll check
7 was not timely provided to him. Moreover, Plaintiff RUDOLPH's final paycheck, once provided, did not
8 include all remuneration owed to him, including, all earned minimum and overtime wages; all owed sick
9 leave pay, and all owed meal and rest period premiums.

10 28:32. Defendants have engaged in unfair business practices in California and willingly and
11 knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this
12 complaint in violation of Business & Professions Code §§ 17200, *et seq.*

13 IV.

14 CLASS ACTION DESIGNATION

15 29:33. Plaintiff~~s~~ brings this class action pursuant to Code of Civil Procedure § 382 on behalf of
16 all current and former similarly-situated employees. The Class that Plaintiff~~s~~ seeks to represent is defined
17 as follows:

18 All current and former non-exempt employees who were employed by
19 Defendants in the State of California as "sales and operations coordinators"
or jobs with similar titles at any time commencing four (4) years prior to the
filing of this Action.

20 30:34. As to Causes of Action One through Eight, Plaintiff~~s~~ seeks to recover on behalf of the Class
21 all remedies available to the extent permitted by law including, but not limited to, wages, damages,
22 penalties, liquidated damages, interest, attorney's fees, costs, other monies due and owing and injunctive
23 relief.

24 31:35. Causes of Action One through Eight are appropriately suited for a class action under Code
25 of Civil Procedure § 382 because:

26 a. Numerosity: The potential Class as defined is significant in size because
27 Plaintiff~~s~~ ~~is~~-are informed and believes and thereon alleges that at all relevant times, Defendants
28

1 employed over 100 similarly-situated current and former employees who were affected by the unlawful
2 employment practices alleged herein. –Based on the potential class size, joinder of all employees
3 individually would be impractical. Plaintiff~~s~~ also believes~~s~~ that there are more than 100 people that are
4 members of the Class.

5 b. Commonality: This action involves common questions of law and fact particular
6 to the putative Class because the action focuses on Defendants’ systematic course of illegal conduct
7 with respect to violating the Labor Codes and IWC Wage Orders and implementing company-wide
8 policies uniformly applied to all members of the putative Class. These common questions of law and
9 fact include, without limitation:

- 10 i. Whether Defendants failed to pay wages and/or overtime compensation as
11 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194,
12 1198 and 1199;
- 13 ii. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order 4-2001
14 or other applicable IWC Wage Orders, by failing to inform Plaintiff~~s~~ and the
15 Putative Class of their right to take compliant off-duty rest periods and failing to
16 provide required rest periods throughout the term of employment and failing to
17 compensate said employees one (1) hours wages in lieu of rest periods;
- 18 iii. Whether Defendants violated Labor Code §§ 226.7 and 512, and IWC Wage
19 Order 4-2001 or other applicable IWC Wage Orders, by failing to authorize and
20 permit Plaintiff~~s~~ and the Putative Class to take complaint, off-duty meal periods
21 throughout the term of their employment and failing to compensate said
22 employees one (1) hours wages in lieu of meal periods;
- 23 iv. Whether Defendants violated Labor Code § 226(a) and Wage Order 4-2001 or
24 other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11160
25 by failing to provide an accurate itemized wage statements that identifies all hours
26 worked and all wages earned by Plaintiff~~s~~ and the Putative Class;
- 27
28

v. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any putative Class Member's employment with Defendants terminated;

vi. Whether Defendants maintained accurate records of the hours worked by Plaintiff~~s~~ and the Putative Class members as required under the relevant provisions of the Labor Code; and

vii. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged.

c. Typicality: Plaintiff~~s~~'~~s~~ claims as alleged herein are typical of the claims of each of the putative Class because Plaintiff~~s~~ ~~was-were~~ subjected to the same violations of ~~his-their~~ rights under California law and seeks the same types of damages, restitution, and other relief on the same theories and legal grounds as those of the members of the putative Class ~~he-they~~ ~~seeks~~ to represent.

d. Adequacy of Representation: Plaintiff~~s~~ ~~is-are~~ able to fairly and adequately protect the interests of all members of the putative Class because it is in ~~his-their~~ best interest to prosecute the claims alleged herein to obtain full compensation due to ~~his-them~~ for all pay, benefits and other relief afforded under the Labor Code and IWC Wage Orders. Plaintiff~~s~~'~~s~~ interest is not in conflict with those of the putative class members. Plaintiff~~s~~'~~s~~ counsel are competent and experienced in litigating large employment class actions including wage and hour cases such as this case.

e. Superiority of Class Action: Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of these claims. Each putative class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies, and/or practices as alleged herein. Class action treatment will allow those similarly-situated persons to litigate his/her claims in the manner that is most efficient and economical for the parties and the judicial system.

V.

PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

1 32-36. The Causes of Action alleged herein are appropriately suited for a Labor Code Private
2 Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

- 3 a) This action involves allegations of violations of provisions of the California Labor Code that
4 either do not provide for a civil penalty or provide for a civil penalty to be assessed and
5 collected by the Labor and Workforce Development Agency (hereinafter referred to as
6 "LWDA") or any departments, divisions, commissions, boards, agencies or employees;
- 7 b) Plaintiff~~s~~ MARTIN ~~and RUDOLPH is-are an-~~ "aggrieved employees" because ~~he-they were-is~~
8 employed by the alleged violators and had one or more of the alleged violations committed
9 against ~~him-them~~ and, therefore, is properly suited to represent the interests of all other
10 current and former employees of Defendants;
- 11 c) Plaintiff~~s~~ MARTIN ~~and RUDOLPH~~ seek~~s~~ to recover all applicable penalties under PAGA
12 on behalf of ~~himself-themselves~~ and all other aggrieved employees including, but not limited
13 to, an amount sufficient to recover underpaid wages including all unpaid and/or underpaid
14 wages pursuant to Labor Code § 558.
- 15 d) Pursuant to Labor Code § 2698, et seq., Plaintiff~~s~~ MARTIN ~~and RUDOLPH~~ ~~has-have~~
16 complied with ~~his-their~~ notice requirements by serving via certified mail, return receipt
17 requested, the LWDA and HERC RENTALS, INC., a notice with ~~his-their~~ claims for wage
18 and hour violations and penalties. The PAGA claims have been tolled during the pendency
19 of the notice period to the LWDA. The statutory period expired, and the LWDA did not serve
20 Plaintiff MARTIN ~~or RUDOLPH~~ with a notice of intent to assume jurisdiction over the
21 applicable penalty claims. Therefore, Plaintiff~~s~~ MARTIN ~~and RUDOLPH~~ ~~has-have~~ satisfied
22 and exhausted the procedural notice requirement to pursue penalties against Defendants
23 pursuant to Labor Code § 2698, et seq.

24 VI.
25 **CAUSES OF ACTION**

26 **FIRST CAUSE OF ACTION**
27 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**
(Violation of Labor Code §§ 1194, 1194.2, 1197, 1198 and the Applicable Wage Order)
28 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

1 ~~33:37.~~ Plaintiff~~s~~ realleges and incorporates by reference the foregoing allegations, as though set
2 forth herein.

3 ~~34:38.~~ Plaintiff~~s~~ and members of the Putative Class are/were “non-exempt” employees of
4 Defendants in the State of California within the meaning of the Labor Code and the applicable Wage
5 Order.

6 ~~35:39.~~ Labor Code § 1197 states “The minimum wage for employees fixed by the commission or
7 by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage
8 than minimum wage so fixed is unlawful.”

9 ~~36:40.~~ Labor Code § 1198 states “The maximum hours of work and the standard conditions of
10 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
11 for employees. The employment of any employee for longer hours than those fixed by the order or under
12 conditions of labor prohibited by the order is unlawful.”

13 ~~37:41.~~ Section 4 of the applicable IWC Wage Order provides that an employer may not pay
14 employees less than the applicable minimum wage for all hours worked.

15 ~~38:42.~~ Labor Code § 1194 states “Notwithstanding any agreement to work for a lesser wage, any
16 employee receiving less than the legal minimum wage or the legal overtime compensation applicable to
17 the employee is entitled to recover in a civil action the unpaid balance of the full amount of his minimum
18 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

19 ~~39:43.~~ As set forth above, Plaintiff~~s~~ and the members of the Putative Class were not paid all
20 minimum and regular wages for all hours worked, including but not limited to the time they worked
21 through they meal periods.

22 ~~40:44.~~ At all material times, Defendants were and/or are Plaintiff~~s~~’~~s~~ and/or all other current and
23 former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of
24 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
25 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
26 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
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1 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
2 to affected employees.

3 ~~41:45.~~ Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
4 individually as employers of Plaintiff~~s~~ and/or all other current and former similarly-situated and aggrieved
5 employees, and/or a person acting on behalf of Plaintiff~~s~~ and/or all other current and former similarly-
6 situated and aggrieved employees employer, who violated, or caused to be violated, any provision
7 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
8 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802,
9 and as such, are liable as an employer of Plaintiff~~s~~ and/or all other current and former similarly-situated
10 and aggrieved employees for such violations pursuant to California Labor Code § 558.1.

11 ~~42:46.~~ As a direct result of Defendants' violations alleged herein, Plaintiff~~s~~ and the members of
12 the putative Class have suffered and continue to suffer, substantial losses related to the use and enjoyment
13 of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to
14 compel Defendants to fully perform their obligation under state law, all to their respective damage in
15 amounts according to proof at trial and within the jurisdictional limitations of this Court.

16 ~~43:47.~~ Plaintiff~~s~~ seek~~s~~ to recover in a civil action the unpaid balance of the full amount of the
17 unpaid wages resulting from Defendants' minimum wage violations including interest thereon, reasonable
18 attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible
19 including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil Procedure
20 § 1021.5.

21 WHEREFORE, Plaintiff~~s~~ pray~~s~~ for relief as hereinafter requested.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME WAGES**

24 (Violation of Labor Code §§ 510, 1198 and the Applicable Wage Order)
(Alleged by Plaintiff~~s~~ Individually and On Behalf of the Class Against Defendants)

25 ~~44:48.~~ Plaintiff~~s~~ realleges and incorporat~~s~~ by reference the foregoing allegations, as though set
26 forth herein.

1 45:49. Plaintiff~~s~~ and members of the putative Class are/were “non-exempt” employees of
2 Defendants in the State of California within the meaning of the Labor Code and the applicable Wage
3 Order.

4 46:50. Labor Code § 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work.
5 Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek
6 and the first eight hours worked on the seventh day of work in any one workweek shall be compensated
7 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
8 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
9 for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
10 be compensated at the rate of no less than twice the regular rate of pay of an employee.”

11 47:51. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
12 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
13 for employees. The employment of any employee for longer hours than those fixed by the order or under
14 conditions of labor prohibited by the order is unlawful.”

15 48:52. Section 3 of the applicable IWC Wage Order provides that an employer may not pay non-
16 exempt employees less than the applicable overtime rate for all overtime hours worked.

17 49:53. Through Defendants’ conduct during the applicable statutory period including, but not
18 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
19 to pay all Plaintiff~~s~~ and the members of the Putative Class all overtime wages for all overtime worked and
20 recorded, all in violation of Labor Code §§ 510, 1198 and the applicable Wage Order.

21 50:54. At all material times, Defendants were and/or are Plaintiff~~s~~’ and/or all other current and
22 former similarly-situated and aggrieved employees’ ’ employers and/or persons acting on behalf of
23 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
24 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
25 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
26 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
27 to affected employees.

1 ~~54.55.~~ Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
2 individually as employers of Plaintiff~~s~~ and/or all other current and former similarly-situated and aggrieved
3 employees, and/or a person acting on behalf of Plaintiff~~s~~ and/or all other current and former similarly-
4 situated and aggrieved employees employer, who violated, or caused to be violated, any provision
5 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
6 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 510, 1193.6, 1194, 1198 and
7 2802, and as such, are liable as an employer of Plaintiff~~s~~ for such violations pursuant to California Labor
8 Code § 558.1.

9 ~~52.56.~~ As a direct result of Defendants' violations alleged herein, Plaintiff~~s~~ and the members of
10 the putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment
11 of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to
12 compel Defendants to fully perform their obligation under state law, all to their respective damage in
13 amounts according to proof at trial and within the jurisdictional limitations of this Court.

14 ~~53.57.~~ Plaintiff~~s~~ seeks to recover in a civil action the unpaid balance of the full amount of the
15 unpaid wages resulting from Defendants' overtime wage violations including interest thereon, reasonable
16 attorney's fees and costs of suit, and penalties, to the fullest extent permissible including those permitted
17 pursuant to Labor Code §§ 510, 558, 1194 and 1194.2 and Code of Civil Procedure §1021.5.

18 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

19 **THIRD CAUSE OF ACTION**
20 **FAILURE TO PROVIDE MEAL PERIODS**
21 (Violation of Labor Code §§ 226.7(b), 512(a), 1198
and the "Meal Period" Section of the Applicable Wage Order)
(Alleged by Plaintiff~~s~~ Individually and On Behalf of the Class Against Defendants)

22 ~~54.58.~~ Plaintiff~~s~~ realleges and incorporates by reference the foregoing allegations, as though set
23 forth herein.

24 ~~55.59.~~ At all times relevant, Plaintiff~~s~~ and the members of the putative Class are and/or were
25 "non-exempt" employee of Defendants in the State of California within the meaning of the Labor Code
26 and the applicable Wage Order.
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1 ~~56:60.~~ Labor Code § 226.7(b) provides: “No employer shall require any employee to work during
2 any meal or rest or recovery period mandated by an applicable order of the Industrial Welfare
3 Commission.”

4 ~~57:61.~~ Labor Code § 512(a) provides: “An employer may not employ an employee for a work
5 period of more than five hours per day without providing the employee with a meal period of not less than
6 30 minutes, except that if the total work period per day of the employee is no more than six hours, the
7 meal period may be waived by mutual consent of both the employer and employee. An employer may not
8 employ an employee for a work period of more than 10 hours per day without providing the employee
9 with a second meal period of not less than 30 minutes.”

10 ~~58:62.~~ Labor Code § 1198 states “The maximum hours of work and the standard conditions of
11 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
12 for employees. The employment of any employee for longer hours than those fixed by the order or under
13 conditions of labor prohibited by the order is unlawful.”

14 ~~59:63.~~ Section 11 of the applicable IWC Wage Order provides, in part, that no employer shall
15 employ any person for a work period of more than five (5) hours without a meal period of not less than
16 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
17 the meal period may be waived by mutual consent of the employer and the employee. An employer may
18 not employ an employee for a work period of more than ten (10) hours per day without providing the
19 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
20 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the
21 employee only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order
22 § 11 provides that if an employer fails to provide an employee a meal period in accordance with the
23 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
24 employee’s regular rate of compensation for each workday that the meal period is not provided.

25 ~~60:64.~~ Through Defendants’ conduct during the applicable statutory period including, but not
26 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
27 violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide
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1 a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during
2 work periods in excess of five consecutive hours and, when applicable, when it failed to provide a second
3 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

4 ~~61.65.~~ Labor Code § 226.7(c) and the applicable IWC Wage Order § 11(D) provide that the
5 employer shall pay an employee one hour of pay at the employee's regular rate of compensation for each
6 workday that the meal period is not provided. Defendants have not paid the appropriate meal premium
7 wages to Plaintiffs and, and on information and belief, all other current and former similarly-situated and
8 aggrieved employees.

9 ~~62.66.~~ At all material times, Defendants were and/or are Plaintiffs's and/or all other current and
10 former similarly-situated and aggrieved employees' employers and/or persons acting on behalf of
11 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
12 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
13 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
14 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
15 to affected employees.

16 ~~63.67.~~ Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of
17 Plaintiff and/or all other current and former similarly-situated and aggrieved employees employer, who
18 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in
19 the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections
20 203, 226, 226.7, 512, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiffs for such
21 violations pursuant to California Labor Code § 558.1.

22 ~~64.68.~~ As a direct result of Defendants' violations alleged herein, Plaintiffs and all other current
23 and former similarly-situated and aggrieved employees have suffered and continue to suffer substantial
24 losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses
25 and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all
26 to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of
27 this Court.

1 ~~65.69.~~ Plaintiff~~s~~ seeks to recover in a civil action the unpaid balance of the full amount of the
2 unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable
3 attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted
4 pursuant to Labor Code §§ 226.7, 512, 558, 558.1, and Code of Civil Procedure § 1021.5.

5 WHEREFORE, Plaintiff~~s~~ prays for relief as hereinafter requested.

6 ///

7 **FOURTH CAUSE OF ACTION**
8 **FAILURE TO PROVIDE REST PERIODS**

9 (Violation of Labor Code §§ 226.7(b), 1198,
10 and the "Rest Period" Section of the Applicable Wage Order)
(Alleged by Plaintiff~~s~~ Individually and On Behalf of the Class Against Defendants)

11 ~~66.70.~~ Plaintiff~~s~~ realleges and incorporates by reference the foregoing allegations, as though set
12 forth herein.

13 ~~67.71.~~ At all times relevant, Plaintiff~~s~~ and the members of the Putative Class are and/or were "non-
14 exempt" employee of Defendants in California within the meaning of the Labor Code and the applicable
15 Wage Order.

16 ~~68.72.~~ Labor Code § 1198 makes the employment of any employee under conditions of labor
17 prohibited by a Wage Order unlawful.

18 ~~69.73.~~ By Order of the Industrial Welfare Commission, every employer shall authorize and permit
19 all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
20 The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
21 rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted, as
22 hours worked, for which there shall be no deduction from wages as provided in the applicable IWC Wage
23 Order.

24 ~~70.74.~~ Pursuant to Labor Code § 226.7(c) and the applicable IWC Wage Order, Defendants shall
25 pay Plaintiff~~s~~ one additional hour of pay at the employees' regular rate of compensation for each day that
26 the rest period is not authorized and permitted.

1 ~~74.75.~~ Through Defendants' conduct during the applicable statutory period including the conduct
2 alleged herein, Defendants violated Labor Code §§ 226.7 and 1198 and the IWC Wage Order when they
3 failed to authorize and permit full 10-minute, uninterrupted, duty-free rest periods for every four hours
4 worked (or major fraction thereof) to Plaintiff~~s~~ and, on information and belief, all other current and former
5 similarly-situated and aggrieved employees during the time period each employee worked for Defendants.

6 ~~72.76.~~ Defendants further have failed to pay to Plaintiff~~s~~ and, on information and belief, all other
7 current and former similarly-situated and aggrieved employees the rest period wage premiums pursuant
8 to Section 226.7. Defendants' omissions in failing to pay the applicable wages set forth in Section 226.7
9 are not in good faith, and further, Defendants had no reasonable grounds for believing the omissions are
10 not in violation of the Labor Code relating to an order of the commission.

11 ~~73.77.~~ At all material times, Defendants were and/or are Plaintiff~~s~~ and all other current and former
12 similarly-situated and aggrieved employees' employers or persons acting on behalf of their employer,
13 within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of
14 Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any
15 Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
16 employee as set for in Labor Code § 558 including the payment of the underpaid wages to affected
17 employees.

18 ~~74.78.~~ Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
19 individually as employers of Plaintiff~~s~~, and/or a person acting on behalf of Plaintiff~~s~~ and all other current
20 and former similarly-situated and aggrieved employees' employer, who violated, or caused to be violated,
21 any provision regulating minimum wages or hours and days of work in the applicable order of the
22 Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6,
23 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff~~s~~ and all other current and former
24 similarly-situated and aggrieved employees for such violations pursuant to California Labor Code § 558.1.

25 ~~75.79.~~ As a direct result, Plaintiff~~s~~ and all other current and former similarly-situated and
26 aggrieved employees have suffered and continue to suffer, substantial losses related to the use and
27 enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in
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1 seeking to compel Defendants to fully perform their obligation under state law, all to the respective
2 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

3 76:80. Pursuant to the Labor Code, Plaintiff~~s~~ seeks to recover in a civil action the unpaid balance
4 of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of
5 suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558,
6 558.1, and Code of Civil Procedure § 1021.5.

7 WHEREFORE, Plaintiff~~s~~ pray~~s~~ for relief as hereinafter requested.

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9
10 **FIFTH CAUSE OF ACTION**
FAILURE TO INDEMNIFY PLAINTIFF EXPENSES
AND LOSSES IN DISCHARGING HIS DUTIES

11 (Violation of Labor Code § 2802)

(Alleged by Plaintiff~~s~~ against All Defendants)

12 77:81. Plaintiff~~s~~ realleges and incorporates by reference the foregoing allegations, as though set
13 forth herein.

14 78:82. At all times relevant herein, as a condition of ~~his~~-their employment, Plaintiff~~s~~, and on
15 information and belief, all other current and former similarly-situated and aggrieved employees were
16 required to utilize their own supplies, including personal cell phones, to perform their job duties.

17 79:83. Labor Code § 2802(a) states "An employer shall indemnify his or her employee for all
18 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
19 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless
20 the employee, at the time of obeying the directions, believed them to be unlawful."

21 80:84. At all relevant times herein, Defendants failed to reimburse Plaintiff~~s~~, and on information
22 and belief, all other current and former similarly-situated and aggrieved employees for necessary
23 expenditures and losses incurred in direct consequence to the discharge of their duties in violation of Labor
24 Code § 2802. Consequently, Plaintiff~~s~~ and all other current and former similarly-situated and aggrieved
25 employees are entitled to reimbursement for expenses incurred as a result of being required to purchase,
26 maintain and utilize their personal cell phones which were necessary to perform their job duties.
27 Defendants, and each of them, derived and continue to derive an unjust and inequitable economic benefit
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1 by failing to comply with the sections alleged herein.

2 ~~81:85.~~ Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
3 individually as employers of Plaintiff~~s~~ and all other current and former similarly-situated and aggrieved
4 employees, and/or a person acting on behalf of Plaintiff~~s~~ and all other current and former similarly-
5 situated and aggrieved employees employer, who violated, or caused to be violated, any provision
6 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
7 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and
8 2802, and as such, are liable as an employer of Plaintiff~~s~~ and all other current and former similarly-
9 situated and aggrieved employees for such violations pursuant to California Labor Code § 558.1.

10 ~~82:86.~~ As a direct result of violating Labor Code § 2802(a), Plaintiff~~s~~ and all other current and
11 former similarly-situated and aggrieved employees have suffered and continue to suffer, substantial losses
12 related to such earned but unpaid wages, incurred expenses, and the use and enjoyment of earned wages,
13 lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
14 perform his obligations under the law, all in an amount to be proved at time of trial.

15 ~~83:87.~~ Labor Code § 2802(b) states “All awards made by a Court or by the Division of Labor
16 Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest
17 at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee
18 incurred the necessary expenditure or loss.” The exact amount of interest is in an amount to be proven at
19 time of trial.

20 ~~84:88.~~ Furthermore, Labor Code §2802(c) states “For the purposes of this section, the term
21 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's
22 fees incurred by the employee in enforcing the rights granted by this section.” Therefore, Plaintiff~~s~~ will
23 seek to recover the amounts unreimbursed, interest, and the costs and attorney's fees he will necessarily
24 incur in pursuing same. The exact amount of reimbursements, interest, costs and attorney's fees will be in
25 an amount to be proved at time of trial.

26 WHEREFORE, Plaintiff~~s~~ pray~~s~~ for relief as hereinafter requested.

27 **SIXTH CAUSE OF ACTION**
28 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE**

ITEMIZED WAGE STATEMENTS

(Violation of Labor Code §§ 226(a), 1198 and the Applicable Wage Order)
(Alleged by Plaintiff~~s~~ Individually and On Behalf of the Class Against Defendants)

~~85.89.~~ Plaintiff~~s~~ realleges and incorporates by reference the foregoing allegations, as though set forth herein.

~~86.90.~~ At all times relevant, Plaintiff~~s~~ and members of the putative Class are/were an employee of Defendants within the meaning of the Labor Code and the applicable Wage Order.

~~87.91.~~ Labor Code § 226(a) states in pertinent part “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing:

(1) Gross wages earned;
(2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; [...]

(4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

(5) Net wages earned;
(6) The inclusive dates of the period for which the employee is paid;
(7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number;

(8) The name and address of the legal entity that is the employer...;

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.... The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

~~88.92.~~ Labor Code § 1198 states “The maximum hours of work and the standard conditions of

1 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
2 for employees. The employment of any employee for longer hours than those fixed by the order or under
3 conditions of labor prohibited by the order is unlawful.”

4 89-93. The relevant IWC Wage Order § 7(A) states in relevant part that the employer shall keep
5 accurate information regarding “(3) Time Records showing when the employee begins and ends each
6 work period... (4) Total wages paid each payroll period, including value of board, lodging, or other
7 compensation actually furnished to the employee. (5) Total hours worked in the payroll period and
8 applicable rates of pay.”

9 94. Through Defendants’ conduct during the applicable statutory period including, but not
10 limited to, the conduct alleged herein, on information and belief, Defendants failed to provide Plaintiff~~s~~
11 and, on information and belief, all other current and former similarly-situated and aggrieved employees
12 accurate wage statements. For example, in addition to the derivative violations suffered by Plaintiff~~s~~ and
13 all other current and former similarly-situated and aggrieved employees as a result of the other violations
14 detailed above, Defendants also failed to provide a wage statement that properly identified the number of
15 overtime hours worked and numbers of vacation and sick hours accrued.

16 90-95. An example of not paying the correct regular rate for overtime can also be seen on
17 Plaintiff RUDOLPH’s wage statement dated 5/24/2019 to 5/30/2019. Plaintiffs received a payment for
18 “TobCredit” which Plaintiff RUDOLPH is informed and believes is non-discretionary compensation,
19 which was not incorporated into Plaintiff RUDOLPH’s regular rate of pay for purposes of calculating
20 overtime. Instead, Plaintiff RUDOLPH was paid overtime at 1.5 times his straight time rates. This same
21 wage statement error can be seen on Plaintiff RUDOLPH’s wage statements throughout his employment
22 including but not limited to wage statements dated as follows: 3/29/2019 to 4/4/2019, 4/5/2019 to
23 4/11/2019, 4/12/2019 to 4/18/2019, 4/29/2019 to 4/25/2019, 4/26/2019 to 5/2/2019, 5/3/2019 to 5/9/2019,
24 5/10/2019 to 5/16/2019, 5/17/2019 to 5/23/2019, 5/24/2019 to 5/30/2019, 5/11/2019 to 6/6/2019, 6/7/2019
25 to 6/13/2019, 6/14/2019 to 6/20/2019, 6/21/2019 to 6/27/2019, 6/28/2019 to 7/4/2019, 7/5/2019 to
26 7/11/2019, 7/12/2019 to 7/18/2019, 7/19/2019 to 7/25/2019, 7/26/2019 to 8/1/2019, 9/2/2019 to 8/8/2019,

8/9/2019 to 8/15/2019, 8/16/2019 to 8/22/2019, 8/23/2019 to 8/29/2019, 8/30/2019 to 9/5/2019, 9/6/2019 to 9/12/2019, 9/13/2019 to 9/19/2019, 9/20/2019 to 9/26/2019

96. Plaintiff~~s~~ and all other current and former similarly-situated and aggrieved employees suffered injuries as a result of Defendants' intentional and knowing failure to provide and maintain the writings required by Labor Code § 226(a) and the IWC Wage Orders. Defendants' failure to provide and maintain accurate statements left Plaintiff~~s~~ and all other current and former similarly-situated and aggrieved employees without the ability to know, understand, and question the hours worked and wages earned and due. As a direct result, Plaintiff~~s~~ and all other current and former similarly-situated and aggrieved employees have suffered and continue to suffer substantial injuries, losses and actual damages related to Defendants' violations, including lost wages, lost interest on such wages, and expense and attorney's fees in seeking to compel Defendants to fully perform their obligations.

97. Furthermore, Plaintiff RUDOLPH was not provided legally compliant meal periods and therefore was not properly compensated for missed meal periods. Even where on the rare occasion when a meal period penalty was provided, such as on the wage statement dated 4/19/2019 to 4/25/2019, that penalty was paid at Plaintiff RUDOLPH's straight time rate of \$26.50 but did not include the TobCredit earned and stated on the face of the wage statement into the regular rate for payment of the meal period penalty.

98. Additionally, on their face, the Defendant did not list the correct name of the employer. On all of Plaintiff RUDOLPH's wage statements, the employer name is listed as Herc Companies instead of the actual employer name of Herc Rentals, Inc.

94-99. As a result of Defendant's violations of various Labor Code and Wage Order provisions, as alleged above, including but not limited to Defendant's unlawful time-rounding policies and practices, incorrect calculation of Plaintiff and class members' regular rate for purposes of overtime as well as failure to pay all due meal and rest period premiums, Defendant failed to provide Plaintiff and the class members with accurate wage statements in violation of Labor Code section 226.

92-100. Labor Code § 226(e)(1) states "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the

1 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
2 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
3 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
4 attorney's fees." Labor Code §226(e)(2)(B) states "An employee is deemed to suffer injury for purposes
5 of this subdivision if the employer fails to provide accurate and complete information as required by any
6 one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
7 determine from the wage statement alone one or more of the following: (i) The amount of gross wages or
8 net wages paid to the employee during the pay period or any other information required to be provided on
9 the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)..."
10 Because Plaintiff at times did not receive any wage statements, or the wage statements did not include,
11 among other things, an accurate accounting of gross wages earned or total hours worked he is deemed to
12 have suffered injury.

13 93.101. Labor Code § 226(h) states "An employee may also bring an action for injunctive
14 relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's
15 fees."

16 94.102. At all material times, Defendants were and/or are Plaintiffs' ~~s~~ and/or all other
17 current and former similarly-situated and aggrieved employees' employers and/or persons acting on behalf
18 of Defendants within the meaning of Labor Code § 558, who violated or caused to be violated, a section
19 of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in
20 any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
21 employee as set forth in Labor Code § 558 including the payment of the underpaid wages to affected
22 employees.

23 95.103. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
24 individually as employers of Plaintiffs' ~~s~~, and all other current and former similarly-situated and aggrieved
25 employees, and/or a person acting on behalf of Plaintiffs' ~~s~~ and all other current and former similarly-
26 situated and aggrieved employees' employer, who violated, or caused to be violated, any provision
27 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
28

Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff~~s~~ for such violations pursuant to California Labor Code § 558.1.

~~96.~~ As a direct result of Defendants' violations alleged herein, Plaintiff~~s~~ and all other current and former similarly-situated and aggrieved employees have suffered and continue to suffer injury including substantial losses related to the use and enjoyment of such wages, lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

~~104.~~ ~~++~~

~~97.~~105. Plaintiff~~s~~ seeks to recover in a civil action all remedies including damages, unpaid wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226(e) and (h), 558, 558.1, and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiff~~s~~ pray~~s~~ for relief as hereinafter requested.

SEVENTH CAUSE OF ACTION
FAILURE TO TIMELY PAY WAGES DUE
DURING AND UPON SEPARATION OF EMPLOYMENT
(Violation of Labor Code §§ 201(a), 202(a), 203, and 204(a))
(Alleged by Plaintiff~~s~~ Individually and On Behalf of the Class Against Defendants)

~~98.~~106. Plaintiff~~s~~ realleges and incorporates by reference the foregoing allegations, as though set forth herein.

~~99.~~107. Plaintiff~~s~~ and members of the Class are/were "non-exempt" employees of Defendants within the meaning of the Labor Code and the applicable Wage Order.

~~100.~~108. Labor Code § 201(a) states "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

~~101.~~109. Labor Code § 202(a) states "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

1 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
2 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive
3 payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall
4 constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the
5 notice of quitting.”

6 ~~102.110.~~ Labor Code section 204(a) states in pertinent part, “All wages . . . earned by any person
7 in any employment are due and payable twice during each calendar month, on days designated in advance
8 by the employer as the regular paydays.”

9 ~~103.111.~~ On information and belief, Defendants willfully failed to provide members of the Class
10 with all wages due and owing, including minimum wages, overtime wages, regular wages, by the time
11 specified by Labor Code §§ 201(a), 202(a), and 204 (a) as applicable.

12 ~~104.112.~~ Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay,
13 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages
14 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty
15 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the
16 wages shall not continue for more than 30 days.”

17 ~~105.113.~~ At all material times, Defendants were and/or are Plaintiffs’~~s~~ and/or all other
18 current and former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf
19 of Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
20 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
21 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
22 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
23 to affected employees.

24 ~~106.114.~~ Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
25 individually as employers of Plaintiffs~~s~~ and all other current and former similarly-situated and aggrieved
26 employees, and/or a person acting on behalf of Plaintiffs~~s~~ and all other current and former similarly-situated
27 and aggrieved employees’ employer, who violated, or caused to be violated, any provision regulating
28

1 minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission,
2 as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802, and as such,
3 are liable as an employer of Plaintiff~~s~~ and all other current and former similarly-situated and aggrieved
4 employees for such violations pursuant to California Labor Code § 558.1.

5 ~~107.115.~~ As a direct result of Defendants' violations alleged herein, Plaintiff~~s~~ and members of
6 the putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment
7 of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to
8 compel Defendants to fully perform their obligation under state law, all to their respective damage in
9 amounts according to proof at trial and within the jurisdictional limitations of this Court.

10 ~~108.116.~~ Plaintiff~~s~~ seeks to recover in a civil action all remedies to the fullest extent permissible
11 including those permitted pursuant to Labor Code § 203.

12 WHEREFORE, Plaintiff~~s~~ pray~~s~~ for relief as hereinafter requested.

13 **EIGHTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.**

15 (Alleged by Plaintiff~~s~~ Individually and On Behalf of the Class Against Defendants)

16 ~~109.117.~~ Plaintiff~~s~~ realleges and incorporates by reference the foregoing allegations, as
17 though set forth herein.

18 ~~110.118.~~ Business & Professions Code § 17200 states "As used in this chapter, unfair
19 competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair,
20 deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with
21 Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

22 ~~111.119.~~ Through Defendants' conduct during the applicable statutory period including, but not
23 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have
24 engaged in business practices in California by practicing, employing, and utilizing, the employment
25 practices outlined in the preceding paragraphs all in violation of California law and the Industrial Welfare
26 Commission Wage Orders. Defendants' use of such practices constitutes an unfair business practice,
27 unfair competition, and provides an unfair advantage over Defendants' competitors doing business in the
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1 State of California that comply with their obligations to properly provide employment conditions in
2 compliance with the law and pay employees for all earned wages and compensation as required by law.

3 ~~112.120.~~ Defendants' violations of the Labor Code and the Industrial Welfare Commission
4 Wage Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business
5 practices because these actions were done in a systematic manner over a period of time to the detriment
6 of Plaintiff~~s~~ and the Class. The acts complained of herein occurred within the last four (4) years preceding
7 the filing of this complaint and include, but are not limited to, failure to (i) pay proper minimum, overtime,
8 and regular wages; (ii) pay timely wages during and upon separation of employment; (iii) maintain
9 accurate records and provide and maintain accurate itemized wage statements; (iv) provide compliant
10 meal and rest breaks; and (v) provide proper hiring and commission/bonuses documents to employees
11 during their employment.

12 ~~113.121.~~ Plaintiff~~s~~ ~~is-are~~ informed and believes and on that basis alleges that, at all times herein
13 mentioned, Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair
14 business practices prohibited by California Business and Professions Code §§ 17200, *et seq.*, including
15 those set forth in the preceding paragraph, thereby depriving Plaintiff~~s~~ and the Class the minimum working
16 condition standards and conditions due, including those under California Labor Code and Wage Order of
17 the Industrial Welfare Commission.

18 ~~114.122.~~ As a result of Defendants' unfair competition as alleged herein, Plaintiff~~s~~ ~~has-have~~
19 suffered injury in fact and lost money or property. Plaintiff~~s~~ ~~has-have~~ been deprived of the rights to wages
20 and benefits due as alleged herein.

21 ~~115.123.~~ Pursuant to California Business & Professions Code § 17203, Plaintiff~~s~~ ~~is-are~~ entitled
22 to seek restitution of all wages and other monies owed on behalf of ~~himself~~ themselves and the represented
23 employees belonging to them, including interest thereon, which Defendants wrongfully withheld from
24 them and retained for themselves by means of its unlawful and unfair business practices.

25 ~~116.124.~~ Plaintiff~~s~~ ~~is-are~~ entitled to an injunction and other declaratory and equitable relief
26 against such practices to prevent future damage for which there is no adequate remedy at law, and to avoid
27 a multiplicity of lawsuits.

1 ~~117.125.~~ Plaintiff~~s~~ ~~is~~are informed and believes, and on that basis, alleges, that the illegal conduct
2 alleged herein is continuing and there is no indication that Defendants will not continue such activity into
3 the future. Plaintiff~~s~~ alleges that if Defendants are not enjoined from the conduct set forth in this
4 Complaint, they will continue to fail to pay the wage and compensation required to be paid and will fail
5 to comply with other requirements of the California Labor Code and Wage Order of the Industrial Welfare
6 Commission.

7 ~~118.126.~~ As a direct and proximate result of Defendants' conduct, Defendants have received and
8 will continue to receive monies that rightfully belong to members of the general public who have been
9 adversely affected by Defendants' conduct, as well as to Plaintiff~~s~~ by virtue of unpaid wages and other
10 monies.

11 ~~119.127.~~ Plaintiff~~s~~ ~~is~~are entitled and seeks any and all available remedies including restitution
12 and recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5,
13 Business and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund
14 doctrine.

15 WHEREFORE, Plaintiff~~s~~ pray~~s~~ for relief as hereinafter requested.

16 **NINTH CAUSE OF ACTION**
17 **PRIVATE ATTORNEY GENERAL ACT (PAGA)**

18 (Violation of Labor Code § 2699, *et seq.*)
(Alleged by Plaintiff~~s~~ Individually and On Behalf of all current and former Aggrieved Employees
Against All Defendants)

19 ~~120.128.~~ Plaintiff~~s~~ MARTIN and RUDOLPH realleges and incorporates by reference the
20 foregoing allegations, as though set forth herein.

21 ~~121.129.~~ Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
22 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
23 commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered
24 through a civil action brought by an aggrieved employee on behalf of ~~himself-themselves~~ or ~~himself~~
25 ~~themselves~~ and other current or former employees pursuant to the procedures specified in Labor Code §
26 2699.3.

27 ~~122.130.~~ Plaintiff~~s~~ MARTIN and RUDOPH ~~is~~arean "aggrieved employee~~s~~" because ~~he~~

1 ~~wasthey were~~ employed by the alleged violator and had one or more of the alleged violations committed
2 against ~~him-them~~ and therefore ~~is-are~~ properly suited to represent the interests of other current and former
3 aggrieved employees of Defendant.

4 131. On or about March 5, 2020 pursuant to Labor Code § 2698, *et seq.*, Plaintiff MARTIN
5 served via certified mail, return receipt requested DEFENDANT, Herc Rentals, Inc., and, on March 4,
6 2020, via on-line services the LWDA with his claims for wage and hour violations and penalties. The
7 statutory period expired, and the LWDA did not serve Plaintiff with a notice of intent to assume
8 jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and exhausted the
9 procedural notice requirement to pursue penalties against Defendant pursuant to Labor Code §2698, *et*
10 *seq.*

11 ~~+23-132.~~ Plaintiff RUDOLPH complied with the procedures for bringing suit specified in
12 Labor Code sections 2699.3 and 2699.5. by letter dated November 21, 2019. Plaintiff RUDOLPH gave
13 written notice to the LWDA via electronic mail at PAGAFilings@dir.ca.gov, and via certified
14 mail to all Defendants, of the specific provisions of the Labor Code and Wage Orders allegedly violated,
15 including the facts and theories to support the alleged violations. . As of the filing of this complaint, the
16 LWDA has not provided the parties any notice of its intention to investigate Plaintiff RUDOLPH's
17 claims on behalf of himself and other aggrieved employees.

18 ~~+24-133.~~ Labor Code § 1198 states “The maximum hours of work and the standard
19 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
20 conditions of labor for employees. The employment of any employee for longer hours than those fixed by
21 the order or under conditions of labor prohibited by the order is unlawful.”

22 ~~+25-134.~~ Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide
23 Plaintiff~~s~~ and current and former aggrieved employees lawfully complaint meal periods and by failing to
24 pay them wages for each day a meal period was not provided. Under Labor Code § 2699 (f)(2) Defendants
25 are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation
26 and \$200 for each aggrieved employee per pay period for each subsequent violation.

27 ~~+26-135.~~ Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide Plaintiff~~s~~
28

1 and current and former aggrieved employees duty-free rest periods and by failing to pay them premium
2 wages for each day a rest period was not provided. Under Labor Code § 2699(f)(2) Defendants are subject
3 to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for
4 each aggrieved employee per pay period for each subsequent violation.

5 ~~127.136.~~ Defendants violated Labor Code §§ 1194, 1197, and 1198 by failing to pay
6 Plaintiff~~s~~ and current and former aggrieved employees at least minimum and regular wages for the time
7 permitted to work, engaged in work, and/or under Defendants' control as alleged herein. Under Labor
8 Code § 2699 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay
9 period for an initial violation and \$200 for each aggrieved employee per pay period for each subsequent
10 violation.

11 ~~128.137.~~ Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff~~s~~ and
12 current and former aggrieved employees overtime wages for the time permitted to work, engaged in work,
13 and/or under Defendants' control as alleged herein. On information and belief, at all relevant times,
14 Plaintiff~~s~~ and other current and former aggrieved employees were not paid overtime wages when they
15 worked in excess of eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor
16 Code § 2699 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay
17 period for an initial violation and \$200 for each aggrieved employee per pay period for each subsequent
18 violation.

19 ~~129.138.~~ Labor Code §§ 226(a), 1174(d), and 1198 and Section 6 of the applicable IWC
20 Wage Order by failing to maintain records detailing the start and end times of work shifts and meal
21 periods, and knowingly and intentionally failing to maintain and provide Plaintiff~~s~~ and other current and
22 former aggrieved employees of Defendants with accurate wage statements itemizing all information
23 required by Labor Code § 226(a), as alleged herein, including the correct total hours worked, all regular
24 hours worked, overtime hours worked, the correct applicable hourly rate per hour worked, the and the
25 correct total wages earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty
26 of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226(a) and
27 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

1 ~~130.~~139. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of
2 \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent citation for failure to
3 provide accurate itemized wage statements.

4 ~~131.~~140. Under Labor Code § 1174.5 an employer who willfully fails to maintain the records
5 by Labor Code § 1174 is a subject to a civil penalty of \$500.

6 ~~132.~~141. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay
7 Plaintiff~~s~~ and other current and former aggrieved employees all minimum, regular, and overtime wages
8 owed, and all meal and rest premiums wages owed by the time set forth by law upon their separation of
9 employment as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil
10 penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§
11 201, 202, 203, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent
12 violation.

13 ~~133.~~142. Defendants violated Labor Code §§ 204 and 1198 by failing to pay Plaintiff~~s~~ and
14 other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all
15 meal and rest premiums wages owed by the time set forth by law upon during their employment as alleged
16 herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
17 aggrieved employee per pay period for the initial violation of Labor Code §§ 204 and 1198, and \$200 for
18 each aggrieved employee per pay period for each subsequent violation.

19 ~~134.~~143. As set forth herein, Defendant violated Labor Code sections 201, 202, 203, 204,
20 223, 226, 226.7, 510, 512, 1174, 1197, 1198, 2810.5 and Labor Code § 2699, *et seq.*, imposes upon
21 Defendants, and each of them, penalties for violating the Labor Code, including those penalties set forth
22 in 210, 226.3, 256, 558, 1174.5, 1197.1, 1194.2 and 2698, *et seq.*

23 ~~135.~~

24 ~~135.~~144. Pursuant to Labor Code § 2699, Plaintiff~~s~~ MARTIN ~~and RUDOLPH~~ seeks to
25 recover civil penalties on behalf of ~~himself~~themselves and other current and former aggrieved employees
26 of Defendant who suffered one or more the labor code violations described herein. The exact amount of
27 the applicable penalty is all in an amount to be shown according to proof at trial.

1 ~~136.145.~~ For bringing this action, Plaintiffs MARTIN and RUDOLPH ~~is~~are entitled to
2 attorney's fees and costs incurred herein.

3 WHEREFORE, Plaintiff~~s~~ MARTIN and RUDOLPH pray~~s~~s for relief as hereinafter requested.

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11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff~~s~~ pray~~s~~s for damages for judgment against Defendants, jointly and
13 severally, as applicable, as follows:

- 14 a. For injunctive relief as provided by the Labor Code and to the extent permitted by law
15 including, but not limited to, pursuant to § 226(h) and Business and Professions Code
16 §17200, *et seq.* and including injunctive relief to compel Defendants to produce all records
17 as required by§ 226(h) and the “Records” section of the applicable IWC wage order;
- 18 b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 19 c. For an order requiring Defendants to restore and disgorge all funds to each affected
20 person acquired by means of any act or practice declare by this Court to be unlawful,
21 unfair or fraudulent and, therefore, constituting unfair competition under Business and
22 Professions Code §§ 17200, *et seq.*;
- 23 d. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial
24 Welfare Commission including, but not limited to, waiting time penalties under Labor
25 Code § 203, penalties under Labor Code §§ 226(e), 226.3, 210, 226.8, 558, and 1174.5,
26 and PAGA penalties pursuant to Labor Code §2698 et seq;
- 27
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- e. For an award of unpaid wages, including regular wages, minimum and overtime wages, to the extent permissible by law to each affected person;
- f. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), and 558.1 penalties;
- g. For an award of actual damages to the extent permissible by the Labor Code including Labor Code § 226(e);
- h. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
- i. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- j. For reasonable attorney's fees and cost of suit and, to the extent permitted by law, including pursuant to Labor Code §§ 218.5, 226, 1194, 2698 et seq. and Code of Civil Procedure § 1021.5; and
- k. An award of such other and further relief as this Court deems proper and just.

Dated: ~~July 9, 2020~~

ShortLegal, APC
CROSNER LEGAL, PC

By: _____

BRIAN R. SHORT
DOROTA A. JAMES
ZACH CROSNER
JAMIE SERB
Attorneys for Plaintiff~~s~~ HECTOR MARTIN and
ERIK RUDOLPH

DEMAND FOR JURY TRIAL

Plaintiff~~s~~ hereby demand~~s~~ trial by jury to the extent authorized by law.

Dated: ~~July 9, 2020~~

ShortLegal, APC
CROSNER LEGAL, PC

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By: _____
BRIAN R. SHORT
DOROTA A. JAMES
ZACH CROSNER
JAMIE SERB
Attorneys for Plaintiffs HECTOR MARTIN and
ERIK RUDOLPH

EXHIBIT C

NOTICE OF CLASS ACTION SETTLEMENT

Hector Martin v. Herc Rentals, Inc./Erik Rudolph v. Herc Rentals, Inc.
San Diego County Superior Court Case No. 37-2020-00016112-CU-OE-CTL (Lead Case)
Los Angeles County Superior Court Case No. 20STCV14715 (Related Case)

IF YOU WERE EMPLOYED BY Herc Rentals, Inc. as an hourly paid non-exempt employee in California anytime between March 19, 2018 and February 24, 2022, YOU ARE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT.

A court approved this notice. This is not an advertisement.

You are not being sued. However, your legal rights are affected whether you act or not.

PLEASE READ THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
INCLUDE THE FOLLOWING:	
DO NOTHING	If you do nothing, you will <u>automatically</u> receive a payment from the Settlement. No action is required for you to receive a share of this Settlement.
EXCLUDE YOURSELF	If you exclude yourself from the Settlement, you will not receive a payment from the Settlement. This is the only option that allows you to file your own lawsuit against Defendant for claims released in this Settlement. However, if you exclude yourself, you will still receive a portion of the monies allocated to settle the claims under the Private Attorneys General Act of 2004 (“PAGA”).
OBJECT	If you have not requested exclusion, you may object to this Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from receiving a portion of the Settlement.

TABLE OF CONTENTS

1.	Why Should You Read This Notice?	Page 1
2.	What Is this Case About?	Page 3
3.	How Will Payments Be Made and How Much Can I Expect to Receive? ...	Page 3
4.	What Are My Rights? How Will My Rights Be Affected?	Page 6
5.	Who Are the Attorneys Representing the Parties?	Page 8
6.	How Do I Obtain More Information?.....	Page 8

1. Why Should You Read This Notice?

You have received this Notice because Defendant’s records indicate that you are or were employed by Herc Rentals, Inc. as a non-exempt employee sometime between March 19, 2018 and February 24, 2022 (this time period is defined as the “Class Period”), which makes you a Class Member. The Class is comprised of all current and former employees of Herc Rentals, Inc. who were employed as non-exempt employees in California during the Class

Period. All individuals fitting this description are considered “Class Members.” The Court has also approved a subclass of all current and former non-exempt employees who worked for Herc Rentals, Inc. as a sales and/or operations coordinator or job with similar titles March 19, 2018 and February 24, 2022 (the “Sales Subclass”).

If you were also employed as a non-exempt employee with Herc Rentals, Inc. anytime between February 9, 2019 and February 24, 2022 (defined as the “PAGA Period”), then you are also an “Aggrieved Employee” and will automatically receive a portion of the PAGA Payment made under this Settlement. All individuals fitting this description within the PAGA Period are considered “Aggrieved Employees.”

This Notice informs you of your rights to share in the Settlement and of the claims being released under the Settlement.

The Court preliminarily approved the Settlement on **INSERT DATE OF PRELIMINARY APPROVAL** in Department C-65 in the San Diego County Superior Court, State of California. At this hearing, the Court determined that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable and ordered that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed Settlement on **INSERT DATE OF FINAL APPROVAL HEARING** at **INSERT TIME OF FINAL APPROVAL HEARING** in Department C-65 of the San Diego County Superior Court, Hall of Justice, located at 330 W Broadway, San Diego, CA 92101. The Final Approval Hearing may be continued to another date without further notice.

A. How Will I Know If The Court Changes The Date Or Location Of The Final Approval Hearing?

If the Court changes the date of the Final Approval Hearing, **you will not receive notice of the change.** It is strongly suggested that, prior to the scheduled Final Approval hearing, you check the Court’s docket on the San Diego Superior Court’s website to see if the hearing is still scheduled on **INSERT DATE OF FINAL APPROVAL HEARING** at **INSERT TIME OF FINAL APPROVAL HEARING** in Department C-65.

To check the Court’s docket, go to <https://roa.sdcourt.ca.gov/roa> and search for Case Number “2020-00016112” and click on “Search.” The date, time, and location of the Final Approval Hearing will be listed under “Future Hearings.” This process is free.

B. I Want To Attend The Hearing. What Are The Court’s COVID-19 Procedures?

If you wish to attend the Final Approval Hearing, please check the Court’s website for the Court’s current social distancing procedures for attendance at hearings – these procedures can change at any time. You can attend the hearing remotely (i.e. by telephone or videoconference) by following the Department’s call-in procedure on their website. Please go to the Court’s website (<http://sdcourt.ca.gov/>) and click on “Appearing for Hearings.” Follow the prompts to attend the hearing by remote appearance. This process is free. If you need further instructions on how to attend this hearing, please contact the Settlement Administrator or Class Counsel.

C. If I Do Not Go To The Final Approval Hearing, How Will I Know If The Court Granted Final Approval Of The Settlement And Entered Final Judgment?

You may contact the Settlement Administrator or Class Counsel to find out if the Court granted Final Approval of the Settlement and entered Judgment. If you wish to obtain a copy of the Judgment, it will be posted on the Settlement Administrator’s website at **INSERT WEBSITE ADDRESS** and is also available on the Court’s docket.

2. *What Is this Case About?*

On March 16, Plaintiff Hector Martin filed a complaint on behalf of himself and all other similarly situated persons employed by Herc Rentals, Inc. (“Defendant”). The *Martin* lawsuit was assigned case number 37-2020-00016112-CU-OE-CTL. Plaintiff Martin later amended his complaint on July 9, 2020. Plaintiff Erik Rudolph filed a similar lawsuit on April 15, 2020, also on behalf of himself and all other similarly situated persons employed by Defendant. The *Rudolph* lawsuit was assigned case number 20STCV14715. The *Martin* lawsuit was filed in the San Diego Superior Court while the *Rudolph* lawsuit was filed in the Los Angeles County Superior Court. Hector Martin and Erik Rudolph are the Plaintiffs and Class Representatives in these lawsuits. They are acting on behalf of themselves and all Class Members.

The *Martin* lawsuit alleges the following claims: (1) failure to pay minimum and regular wages; (2) failure to pay overtime wages; (3) failure authorize and permit rest periods; (4) failure to provide meal periods; (5) failure to reimburse expenses; (6) failure to timely furnish accurate itemized wage statements; (7) failure to timely pay wages due upon separation; (8) Unfair Business Practices (“UCL”); and (9) penalties pursuant to Labor Code § 2698 et seq. (“PAGA”). The *Rudolph* lawsuit alleges the following claims: (1) unpaid minimum wage and liquidated damages; (2) unpaid overtime; (3) failure to provide meal periods or compensation in lieu of; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to provide accurate wage statements; (6) waiting time penalties; (7) violation of the UCL; and (8) violation of PAGA. Both lawsuits seek recovery of unpaid wages, restitution, damages, statutory penalties, civil penalties, interest, attorney’s fees and costs.

Defendant denies the allegations raised in both lawsuits and believe it has no liability for any of Plaintiffs’ or the Class Members’ claims under any statute, wage order, common law, or equitable theory. The Court has not expressed any opinion as to the validity of the claims raised in these lawsuits and has not ruled on any of the causes of action prior to the parties’ agreement to settle.

The Parties reached a Settlement subject to Court approval as represented in the Settlement Agreement and Release of Claims (the “Settlement”).

Class Counsel believes that the Settlement is fair, reasonable, and adequate, and that it is in the best interests of Class Members. Likewise, Defendant has decided that settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and settlement immediately resolves, finally and completely, the pending and potential claims. Defendant does not admit, concede or imply that it has done anything wrong or legally actionable by settling this lawsuit.

3. *How Will Payments Be Made and How Much Can I Expect to Receive?*

Herc Rentals, Inc. will pay a total sum of \$600,000 (“Gross Settlement Amount”). The following payments will be deducted from the Gross Settlement Amount: (1) the Class Representative Enhancements, in an amount estimated not to exceed \$7,500.00 to each Plaintiff; (2) the Settlement Administrator’s costs and fees incurred to administer this settlement, in an amount estimated not to exceed \$20,000.00; (3) the PAGA Payment of \$20,000.00 (75% or \$15,000.00 of which will be sent to the California Labor and Workforce Development Agency (“LWDA”) and 25% or \$5,000.00 of which will be distributed proportionately to Aggrieved Employees); (4) attorney’s fees, in an amount not to exceed \$200,000.00 (33.33% of the Gross Settlement Amount); and (5) litigation costs, in an amount not to exceed \$20,000.00. All of these payments are subject to Court approval and the Court has the discretion to

award less than the amounts listed above. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid separately from the Gross Settlement Amount.

A. How Are Payments to Class Members Calculated?

After deducting the above-referenced items, the remaining Net Settlement Amount will be proportionately distributed amongst all Class Members who have not requested exclusion from the Settlement.

Each Class Member's proportionate share of the Net Settlement Amount will be calculated as follows: (a) The number of workweeks worked by the entire Class will be determined based upon Defendant's records and utilized as the Total Class Workweeks for the subsequent calculations; (b) The number of workweeks for the Sales Subclass shall be determined based upon Defendants Records and the percentage of Sales Subclass Workweeks compared to Total Class Workweeks shall be determined; (c) The Claims Administrator shall then utilize this information to determine the appropriate amount of the Net Settlement Amount to be distributed to the entire Class and Sales Subclass by calculating the amounts necessary to compensate the Sales Subclass in a ratio of 3:2 compared to the non-Sales Subclass Members from the Net Settlement Amount; and (d) The Claims Administrator shall then utilize the applicable weekly rate ("Workweek Value") for each subclass to calculate the individual participating Class Member's Payment Amount. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked in each subclass as a proportion of the total subclass for Defendant in California during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked for Defendant in California during the Class Period multiplied by the Workweek Value based upon the subclass to which they belong.

B. How Are Payments to Aggrieved Employees Calculated?

Each Aggrieved Employee will receive a proportionate share of the \$5,000.00 PAGA Payment earmarked for distribution to Aggrieved Employees. This payment will be calculated by dividing the number of pay periods an individual Aggrieved Employee worked for Defendant in California during the PAGA Period, by the total number of pay periods worked by all Aggrieved Employee during the PAGA Period and multiplied by \$5,000.00. The number of pay periods worked by all Aggrieved Employees will be derived from Defendant's records.

C. What Is My Estimated Payment?

Although your exact individual settlement payment cannot be precisely calculated until after the time during which Class Members may request to exclude themselves from the Settlement concludes, based upon the calculations above, your estimated individual settlement payments are as follows:

Defendant's records indicate that you were employed as a [Class/Sales Subclass] member approximately [redacted] workweeks between March 19, 2018 through February 24, 2022. Based on these records, your total estimated payment as a Class Member would be \$ [redacted], less applicable taxes.

Defendant's records indicate that you were employed approximately [redacted] pay periods between February 9, 2019 through February 24, 2022. Based on these records, your total estimated payment as an Aggrieved Employee would be \$ [redacted].

D. My Work Week/Pay Period Count Is Incorrect. How Do I Dispute It?

If you think the number of weeks/pay periods you worked during the Class Period or PAGA Period are incorrect, you may contact the Settlement Administrator to dispute your work week/pay period allotment and provide any documentation supporting your dispute. Your dispute must be returned by mail to the Settlement Administrator and postmarked on or before the **[INSERT RESPONSE DEADLINE]**. The postmark date will be the exclusive means to determine whether a dispute was submitted on time.

The Settlement Administrator will investigate your dispute, request additional information from Defendant, and make a final decision as to the number of eligible work weeks/pay periods that should be used to determine your individual settlement payment. Absent evidence demonstrating Defendant's records are incorrect, Defendant's records will be presumed correct.

E. How Will My Settlement Payment Be Taxed?

Twenty percent (20%) of each individual settlement payment will be allocated as wages and eighty percent (80%) will be allocated as non-wages for penalties and interest. The portion allocated to wages will be reported on an IRS Form W-2 and the portion allocated to non-wages will be reported on an IRS Form-1099 by the Settlement Administrator. No tax withholding shall be made on the non-wages portion of the individual settlement payment. The Settlement Administrator will issue the checks and IRS Forms to each Class Member.

F. What Happens If I Do Not Cash My Settlement Check?

Any checks issued by the Settlement Administrator must be cashed or deposited within 180 calendar days. After 180 calendar days from the date of mailing, the checks shall become null and void, and the uncashed funds shall be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, in the name of those individuals who did not cash their checks to claim at a future date.

G. Moving? Update Your Address With The Settlement Administrator.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your payment under the Settlement.

4. *What Are My Rights? How Will My Rights Be Affected?*

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are explained below. ***Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement. California law protects Class Members from retaliation based on their decision to participate in a class action settlement.***

DO NOTHING:	If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and <u>automatically</u> receive an individual settlement payment. You will be bound to the release of the Released Claims as defined in the Settlement and the Judgment. You will also give up your right to pursue the Released Claims as defined below.
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REQUEST EXCLUSION (“OPT OUT”):	If you do <u>not</u> want to take part in the Settlement, you must mail or fax a written request for exclusion form to the Settlement Administrator. The written request for exclusion form must include your full name and signature. The Request for Exclusion Form must be mailed and postmarked on or before [INSERT RESPONSE DEADLINE]. The postmark date will be the exclusive means to determine whether the request for exclusion was submitted on time. Following Final Approval of the Settlement, the Court will enter Judgment. The Judgment will bind all Class Members who do not request exclusion from the Settlement on time. If you request exclusion from the Settlement, you retain your rights to sue the Released Parties for the Released Claims and will not receive an individual settlement payment. However, even if you request exclusion from the Settlement, but are also an Aggrieved Employee, you may not opt-out of this portion of the Settlement and you will still receive your proportionate share of the PAGA Payment.
OBJECT:	If you have not requested exclusion from (i.e. opted out of) the Settlement, you may object to the Settlement, personally or through an attorney, by either attending the Final Approval hearing and orally objecting or mailing your written objection to the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR’S ADDRESS] or faxing your written objection to the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR’S FAX NUMBER]. The written objection should state: (a) your full name; (b) the words “Notice of Objection” or “Formal Objection”; and (c) describe, in clear and concise terms, the arguments supporting your objection. You may appear (but are not required) at the Final Approval Hearing, in person or through an attorney. The Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak regarding his or her objection. The written objection must be postmarked or faxed on or before [INSERT RESPONSE DEADLINE]. The postmark or fax receipt dates will be the exclusive means to determine whether the written objection was submitted on time. If the Court rejects or overrules your objection, you will receive your individual settlement payment and be bound by the terms of the Settlement.

Effect of the Settlement on Your Rights:

The Judgment entered by the Court upon Final Approval of the Settlement shall have res judicata effect and be final and binding upon Plaintiffs and all Class Members who have not expressly requested to be excluded from the Settlement. All Class Members who do not request to be excluded from the Settlement will release the Released Parties from the following Released Claims for the Class Period:

Upon the Effective Date, and subject to Defendant’s full payment of the Gross Settlement Amount, Plaintiffs and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and any of its related companies, assigns, current and former employees, insurers and attorneys (“Released Parties”) from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period. “Released Claims” are all claims asserted in the Actions or any other

claims that could have been asserted in the Actions based on the facts alleged, including but not limited to: unpaid wages (including overtime and commissions), regular rate of pay claims for overtime and wage premiums, failure to provide meal periods or provide premium pay for missed meal periods, failure to provide rest periods or provide premium pay for missed rest periods, failure to indemnify or reimburse for business expenses, waiting time penalties, wage statement violations, unfair business practice claims premised on the above claims, and PAGA claims premised on the above claims.

5. *Who Are the Attorneys Representing the Parties?*

Class Counsel / Plaintiffs' Counsel:

Brian R. Short, Esq.
SHORTLEGAL, APC
350 10th Avenue, Suite 1000
San Diego, CA 92101

Zachary Crosner, Esq.
CROSNER LEGAL PC
9440 Santa Monica Boulevard, Suite 301
Beverly Hills, CA 90210

Defense Counsel:

Tim Johnson, Esq.
Cameron Flynn, Esq.
OGLETREE, DEAKINS, NASH, SMOAK & STEWART PC
4660 La Jolla Village Drive, Suite 900
San Diego, CA 92122

You do not need to hire your own attorney because Class Counsel are working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. *How Do I Obtain More Information?*

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you can request copies of documents filed with the Court, free of charge, from Class Counsel or the Settlement Administrator.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call the Settlement Administrator at **[INSERT PHONE NUMBER]**. Please refer to the Herc Rentals Class Action Settlement. You may also contact Class Counsel Brian Short at (619) 272-0720 or Zachary Crosner at (866) 276-7637.

You may also obtain copies of the Settlement Agreement, Motion for Preliminary Approval and Preliminary Approval Order on the Settlement Administrator's website: **[INSERT WEBSITE]**.

You may also obtain documents filed in these lawsuits from the Court's website for a fee. Go to <https://roa.sdcourt.ca.gov/roa>. Click on "Accept Terms," and complete the security questions presented. Then type in the Case Number "2020-00016112" and click on "Search" to access documents on file for each of the Martin lawsuit. You can preview the documents listed on this page or purchase them for a fee.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.