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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KATHRYNE MARTINEZ-LOPEZ, an
individual, on behalf of herself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

MEDAMERICA, INC. a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE No. **37-2020-00034393-CU-OE-CTL**

**DECLARATION OF NORMAN BLUMENTHAL
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: December 16, 2022

Hearing Time: 10:30 a.m.

[Hearing scheduled by Order dated June 23, 2022]

Dept.: C-68

Judge: Hon. Richard S. Whitney

Action Filed: September 28, 2020

Trial Date: Not Set

1 I, NORMAN B. BLUMENTHAL, declare as follows:

2 1. I am the managing partner of the law firm of Blumenthal Nordrehaug Bhowmik De
3 Blouw LLP, counsel of record for Plaintiff Kathryn Martinez-Lopez ("Plaintiff") in this matter. As such,
4 I am fully familiar with the facts, pleadings and history of this matter. The following facts are within my
5 own personal knowledge, and if called as a witness, I could testify competently to the matters stated
6 herein. This declaration is being submitted in support to the Plaintiff's motion for final approval of the
7 class settlement.

8 2. Over the course of the litigation, a number of attorneys in my firm have worked on this
9 matter. Their credentials are reflected in the Blumenthal Nordrehaug Bhowmik De Blouw LLP firm
10 resume, a true and correct copy of which is attached hereto as Exhibit #1. Some of the major cases our
11 firm has undertaken are also set forth in Exhibit #1. The bulk of the attorneys involved in this matter at
12 Blumenthal Nordrehaug Bhowmik De Blouw LLP have had substantial class litigation experience in the
13 areas of employment class actions, unfair business practices and other complex litigation. The attorneys
14 at my firm have extensive experience in cases involving labor code violations and overtime claims. Class
15 Counsel has litigated similar overtime cases against other employers on behalf of employees, including
16 cases against Cigna, Health Net, Securitas, Okta, Healthnet, See's Candies, El Pollo Loco, Total Renal,
17 Panda Express, Solarcity, Space Exploration, Union Bank, Verizon, Apple, Wells Fargo, Kaiser,
18 Universal Protection Services, and California State Automobile Association. Class Counsel have been
19 approved as experienced class counsel during contested motions in state and federal courts throughout
20 California. It is this level of experience which enabled the firm to undertake the instant matter and to
21 successfully combat the resources of the defendants and their capable and experienced counsel. Class
22 Counsel have participated in every aspect of the settlement discussions and have concluded the settlement
23 is fair, adequate and reasonable and in the best interests of the Class.

24
25 3. Summary of the Proposed Settlement.

26 (a) A true and correct copy of the Class Action Settlement Agreement (the "Agreement") between
27
28

1 the parties is attached hereto as Exhibit #2.¹ Plaintiff and Defendant MedAmerica, Inc. ("Defendant")
2 reached a full and final settlement of the above-captioned action, which is embodied in the Agreement
3 filed concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount
4 to be paid by Defendant is Four Hundred Thousand Dollars (\$400,000). (Agreement at ¶¶ I(S) and
5 III(B).) Under the Agreement, the Gross Settlement Amount consists of the following elements: (1)
6 Settlement Shares to the Participating Class Members, (2) Settlement Administration Expenses, (3) Class
7 Counsel Fees Payment, (4) Class Counsel Litigation Expenses Payment, (5) Class Representative Service
8 Payment, and (6) the PAGA Payment, and excluding any employer payroll taxes, if any, due on the
9 portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement
10 and shall be the separate additional obligation of Defendant. (Agreement at ¶ I(S) and III(B).) The Gross
11 Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶¶ I(S) and III(B).)

12 (b) Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
13 Defendant's share of payroll taxes within fifteen (15) days of the Effective Date. (Agreement at ¶
14 III(F)(9).)

15 (c) Within fifteen (15) days of the Effective Date, Defendant shall fund the Gross Settlement
16 Amount and the amount necessary to pay Defendant's share of payroll taxes within fifteen (15) days of
17 the Effective Date. (Agreement at ¶ III(F)(9).) Within fifteen (15) days after Defendant funds the Gross
18 Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares to
19 Participating Class Members. (Agreement at ¶ III(F)(9).)

20 (d) The Net Settlement Amount shall equal the Gross Settlement Amount less the Court approved
21 amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel
22 Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses.
23 (Agreement at ¶ I(U).) The Net Settlement Amount will be distributed as the Settlement Shares to each
24 Participating Class Member defined at ¶ I(Y) as a Class Member who does not submit a valid and timely
25 Election Not to Participate in Settlement. (Agreement at ¶¶ III(D)(1).) The Settlement Share will be
26 calculated as follows: (i) the Settlement Administrator shall divide the Net Settlement Amount by the
27 _____

28 ¹ Capitalized terms are defined in the Agreement.

1 total number of pay periods worked by all Participating Class Members as reflected in their dates of
2 employment to determine a dollar amount per week ("Pay Period Rate"); and (iii) the Settlement
3 Administrator shall then take the number of pay periods worked by each Participating Class Member,
4 individually, and multiply it by the Pay Period Rate to calculate each Participating Class Member's
5 respective Settlement Share. (Agreement at ¶ III(D)(2).) Pay periods will be based on Defendant's
6 records, however Class Members will have the right to challenge their pay periods. (Agreement at ¶
7 42(b).)

8 (e) Class Members were sent the Court approved Class Notice using the procedure approved by
9 the Court by mailing the notice packets after updating class members' addresses using the National
10 Change of Address database and, for any notice packets returned as undeliverable, re-mailing such
11 notices to any forwarding address provided or updated address located. Declaration of Madely Nava
12 ("Nava Decl.") ¶¶ 6-7. Class Members were provided with the opportunity to exclude themselves or "opt
13 out" if they did not want to participate in the settlement. (Agreement at ¶ III(F)(3), Ex. A., Nava Decl.
14 ¶7, Exh. A. One (1) Class Member submitted a valid request for exclusion. Nava Decl. ¶11. The
15 remaining Class Members are deemed Participating Class Members who are bound by the Settlement and
16 will be entitled to receive a Settlement Share. (Agreement at ¶ III(F)(3)(c).) An Aggrieved Employee
17 who opts out the Settlement will still be paid their allocation of the PAGA Payment and will remain
18 subject to the release of the PAGA Released Claims, regardless of their request for exclusion.
19 (Agreement at ¶ III(F)(3)(c).) Finally, the Class Notice will also advise the Class Members of their right
20 to object to the Settlement and/or dispute their Pay Periods. (Agreement at ¶ III(F)(3), Ex. A.)

21 (f) A Participating Class Member must cash his or her Settlement Share check within 180 days
22 after it is mailed. (Agreement at ¶ III(F)(10).) The Settlement Administrator will send a reminder to
23 Participating Class Members who have not cashed their checks within 120 days after its last mailing to
24 the affected individual. (Agreement at ¶ III(F)(10).) Any settlement checks not cashed within 180 days
25 will be voided and any the funds from such uncashed checks will be paid to the California State
26 Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not
27 cash their check. (Agreement at ¶ III(F)(10).)

28 (g) ILYM Group was appointed by the Court as the Settlement Administrator for the Settlement.

1 (Preliminary Approval Order at ¶ 9; Agreement at ¶ III(E).) From the Gross Settlement Amount, the
2 Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount not
3 to exceed \$10,000. (Agreement at ¶ III(C)(4).) As set forth in the Nava Decl. at ¶15, the Settlement
4 Administration Expenses, including fees and costs incurred to-date, as well as anticipated fees and costs
5 for completion of the settlement administration, are \$9,967.38.

6 (h) Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
7 not to exceed one-third (1/3) of the Gross Settlement Amount, as the Class Counsel Fees Payment.
8 (Agreement at ¶ III(C)(2).) Class Counsel will also be allowed to apply separately for an award of Class
9 Counsel Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶ III(C)(2).)
10 Subject to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff
11 as the Class Representative Service Payment. (Agreement at ¶ III(C)(1).) In support of this separate
12 motion for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is providing
13 evidentiary support, for these requests, including lodestar.

14 (i) Subject to Court approval, Twenty Thousand Dollars (\$25,000) will be paid from the Gross
15 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
16 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
17 the PAGA Payment shall be allocated as follows: 75% (\$18,750) to the LWDA as the LWDA's share of
18 the PAGA Payment pursuant to PAGA and 25% (\$6,250) will be distributed to the Aggrieved Employees
19 based on their respective pay periods worked during the PAGA Period. (Agreement at ¶ III(C)(3).) As
20 set forth in the accompanying proof of service, the LWDA has been served with this motion and the
21 Agreement.

22 (j) The Settlement is fair, adequate and reasonable to the class and should be finally approved
23 for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the
24 settlement is "fair, adequate, and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the
25 Settlement valued at \$400,000 is an excellent result for the Class. This result is particularly favorable
26 in light of the fact that liability and class certification in this case were far from certain in light of the
27 defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, the
28 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed

1 settlement is fair, reasonable and adequate, and should be finally approved.

2
3 4. Procedural status of the settlement - In accordance with the Preliminary Approval Order
4 dated April 11, 2022 ("Preliminary Approval Order"), the approved Class Notice has been disseminated
5 to the Class. The reaction of the Class unequivocally supports approval of the Settlement. On August
6 15, 2022, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members,
7 which provided each class member with the terms of the Settlement, including notice of the claims at
8 issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award that
9 were being sought, how individual settlement awards would be calculated, and the specific, estimated
10 payment amount to that individual. See Nava Decl. ¶ 7, Exh. A. In disseminating the notice, the
11 Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
12 Approval Order. Significantly, there have been no objections and only one request for exclusion. Nava
13 Decl. ¶¶ 11, 12. As such, nearly the entire Class will participate in the Settlement and will be sent a
14 settlement check. See Nava Decl. at ¶¶ 13, 14.

15
16 5. Description of Plaintiff's claims - The Action generally alleges that Plaintiff and other
17 Class Members were not properly paid all overtime wages for hours worked, were not provided meal and
18 rest periods, were not timely paid earned wages, were not provided reimbursement for required expenses,
19 were not provided accurate itemized wage statements, were not paid all wages at the time of termination.
20 The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal
21 relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing claims.

22
23 6. Procedural History of the Litigation

24 (a) On September 28, 2020, Plaintiff filed a Representative Action Complaint against
25 Defendant in the Superior Court of the State of California, County of San Diego (Case No.
26 37-2020-00034393-CU-OE-CTL). In her Complaint, Plaintiff asserted a single cause of action against
27 Defendant seeking recovery of civil penalties under the Private Attorney General Act, Cal. Labor Code
28 §§ 2698, et seq. ("PAGA").

1 (b) On November 24, 2020, Defendant filed an Answer to Plaintiff's Complaint. On
2 January 7, 2021, Plaintiff served and amended PAGA notice on Defendant and that LWDA.

3 (c) Prior to mediation, the Parties engaged in the above investigation and the exchange
4 of documents and information in connection with the Action. On July 13, 2021, the Parties participated
5 in an all-day mediation presided over by Steven Rottman, Esq., a respected and experienced mediator
6 of wage and hour class actions. The Parties were unable to reach a settlement at the mediation.
7 Following the mediation, each side, represented by its respective counsel, continued to engage in
8 negotiations through the Mediator and were able to agree to settle the Action based on a mediator's
9 proposal which was memorialized in the form of a Memorandum of Understanding. At all times, the
10 negotiations were arm's length and contentious.

11 (d) The Parties continued to negotiate the terms of the settlement and prepared the final
12 Agreement which was signed by the Parties and is now presented to this Court for preliminary approval.
13 Accordingly, for purposes of this Settlement, the "Class" is defined as all current and former non-exempt
14 employees employed by MedAmerica, Inc., who worked in California at any time during the Class
15 Period." (Agreement at ¶ I(C).) The Class Period is from April 15, 2019 through the October 15, 2021.
16 (Agreement at ¶ I(J).) The Class consists of an estimated 291 Class Members who worked 9,732 pay
17 periods during the Class Period.

18 (e) On August 14, 2022, Plaintiff filed a First Amended Complaint adding class action allegations
19 limited to the Class and Class Period and the following causes of action under California law on behalf
20 of the Class: (1) failure to provide meal periods or pay premium wages for missed, denied, or
21 unauthorized meal periods; (2) failure to provide rest breaks, or premium wages for missed, denied, or
22 unauthorized rest breaks; (3) failure to pay overtime wages; (4) failure to pay minimum wage, including
23 the prevailing minimum wage, off-the-clock claims, and payment for all hours worked; (5) failure to
24 timely pay wages during employment; (6) failure to pay all wages due to discharged and quitting
25 employees; (7) failure to maintain required records, including failure to keep accurate and complete
26 payroll records (8) failure to furnish accurate itemized wage statements or provide fully and accurately
27 itemized wage statements; (9) failure to indemnify employees for necessary expenditures incurred in
28 discharge of duties; (10) California Civil Code section 558 penalties and civil penalties pursuant PAGA

1 and (11) unfair and unlawful business practices, in violation of Business and Professions Code section
2 17200 et. seq.

3 (f) Class Counsel has conducted a thorough investigation into the facts of the class action. Over
4 the course of over two years, Class Counsel has diligently evaluated the Class Members' claims against
5 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
6 access to necessary information for the Class. In addition, Class Counsel previously negotiated
7 settlements with other employers in actions involving nearly identical issues and analogous defenses.
8 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
9 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
10 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
11 circumstances, including the risk of significant delay, defenses asserted by Defendant, Defendant's
12 financial circumstances and potential appellate issues.

13
14 7. History of Settlement Discussions

15 (a) This Settlement is the result of extensive and hard-fought litigation as well as negotiations
16 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
17 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
18 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
19 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate
20 the class claims, the viability of the defenses asserted, and the risks and benefits of trial and settlement,
21 and Class Counsel are experienced in wage and hour employment law class actions, as Class Counsel
22 has previously litigated and certified similar claims against other employers.

23 (b) The Parties attended an arms-length mediation session with Steven J. Rottman, a respected
24 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
25 preparation for the mediation, Defendant provided Class Counsel with necessary information for the
26 members of the Class, including time data, payroll data and data concerning the composition of the Class.
27 Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and
28 submitted a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the

1 Parties agreed to this Settlement.

2 (c) From September 2021 to November 2021, the settlement agreement and exhibits thereto were
3 drafted, finalized and executed. On June 23, 2022, the Court issued its Order granting preliminary
4 approved of the settlement as fair and reasonable to the Class.

5 (d) Plaintiff and Class Counsel believe that this settlement is fair, reasonable and adequate. In
6 my judgment as experienced Class Counsel, this Settlement should be finally approved.

7

8 8. The outcome of this case would have been uncertain and fraught with risks.

9 (a) Here, a number of defenses asserted by Defendant present serious threats to the claims of the
10 Plaintiff and the other Class Members, including that Class Members signed arbitration agreements and,
11 as a result, the class claims would be have been subject to a dismissal. Defendant also asserted that
12 Defendant's practices complied with all applicable Labor laws. Defendant maintained that off the clock
13 work was contrary to company policy and was not permitted in practice. Defendant contended that their
14 meal and rest period policies fully complied with California law, that Defendant's timekeeping system
15 recorded meal periods, and that all meal periods were provided and many facial violations seemed to
16 have been paid by a penalty. Further, Defendant argued that Defendant was not required to record rest
17 periods, so there was no evidence of missed rest periods. Finally, Defendant could argue that the
18 Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's
19 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also
20 argued that based on its facially lawful practices, it acted in good faith and without willfulness, which
21 if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. In fact,
22 under the current state of the law, it is questionable whether these penalties could be awarded at all based
23 upon the alleged meal and rest period violations. If successful, Defendant's defenses could eliminate or
24 substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be
25 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery
26 by the Class.

27 (b) There was also a significant risk that, if the Actions were not settled, Plaintiff would be
28 unable to obtain class certification and thereby not recover on behalf of any employees other than

1 themselves. Defendant also argued that the individual experience of each putative class member varied
2 with respect to the claims. Defendant could also contest class certification by arguing injury and good
3 faith were case by case determinations that precluded class certification. Plaintiff is aware of cases where
4 class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885,
5 256 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
6 contended that individual differences in work experiences not only impacted damages but would also
7 impact certification. Finally, even if class certification was successful, as demonstrated by the California
8 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant
9 hurdles to overcome for a class wide recovery even where the class has been certified. While other cases
10 have approved class certification in wage and hour claims, class certification in this action would have
11 been hotly disputed and was by no means a foregone conclusion.

12 (c) As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
13 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event of
14 an adverse judgment. A post-judgment appeal by Defendant would have required many more years to
15 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
16 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
17 an uncertain result three or more years in the future. Plaintiff and Class Counsel recognize the expense
18 and length of a trial against Defendant through possible appeals which could take at least another two
19 or three years. Class Counsel also have taken into account the uncertain outcome, the risk of litigation,
20 especially in complex actions such as this one. Class Counsel are also mindful of and recognize the
21 inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Moreover,
22 post-trial motions and appeals would have been inevitable. Costs would have mounted and recovery
23 would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and
24 Class Counsel believe that the Settlement confers substantial benefits upon the Class. Based upon their
25 evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement
26 is in the best interest of the Class.

27 (d) The calculations to compensate for the amount due to the Class Members at the time this
28 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of

1 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
2 putative class members and determined the potential maximum damages for the class claims. For the
3 Class, Plaintiff determined that the alleged unpaid overtime wages due to the miscalculation of the
4 regular rate of pay to be \$19,525, the alleged unpaid wages due based on off the clock allegations to be
5 \$568,379, the maximum meal period damages were estimated to be \$287,334 based upon a potential 11%
6 violation rate observed In the time punch records, the maximum rest period damages were estimated to
7 be \$287,334 based upon the same violation rate, and the maximum damages for unreimbursed expenses
8 were estimated to be \$139,014 at a rate of \$30 of unreimbursed expenses incurred each month. In total,
9 the damages for the Class were calculated to have a maximum total value of \$1,216,608. In addition,
10 Plaintiff calculated that the maximum value of the waiting time penalties were between \$406,615 and
11 \$806,220 and the maximum value of the wage statement penalties to be between \$322,150 and \$958,650,
12 both depending on the predicate violation giving rise to the penalty. However, these wage statement and
13 waiting time penalties claims potentially have a much smaller value, even if damages were awarded, to
14 the extent that they are only derivative of the meal and rest break claims.² Consequently, the Gross
15 Settlement Amount represents more than 32% of the value of the potential maximum damages at issue
16 for the Class in this case, assuming these amounts could all be proven in full at trial.³ The above
17 maximum calculations should then be adjusted in consideration for both the risk of certification and the
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19 ² While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
20 226, at mediation Plaintiff recognized that these claims were subject to various defenses asserted by
21 Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages
22 for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and the
23 putative clsss members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App.
24 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a
25 good faith dispute as to whether and when the wages were due."). Additionally, Courts had held that
26 violations of the meal and rest period regulations, which require payment of a "premium wage" for each
improper meal period, do **not** give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang's*
China Bisto, Inc., 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.
App. 5th 1308, 1336 (2018). As a result, at the time of mediation, the viability of Plaintiff's claims on
these theories was uncertain.

27 ³ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the
28 PAGA claim in this discussion. The PAGA claim is addressed in the Declaration of Nordrehaug at ¶33,
submitted in support of the motion for preliminary approval.

1 risk of establishing class-wide liability on all claims. Given the amount of the Settlement as compared
2 to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁴ Even greater
3 detail as to the valuation of the class claims was presented in the Declaration of Kyle Nordrehaug
4 submitted in support of preliminary approval.

5 (e) In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
6 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and substantial
7 defenses both to liability and to class certification. Currently, the maximum and average class member
8 allocation are \$1,187 and \$632, respectively. See Nava Decl. ¶ 14. Given the complexities of this case,
9 the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable
10 and adequate, and should be finally approved.

11 (f) It is impossible to predict with certainty whether, under the facts of this case, Plaintiff would
12 prevail against the Defendant's factual and legal defenses. While Plaintiff and Class Counsel believe in
13 the merits of the claims, Defendant has asserted real and substantial defenses to these claims and to class
14 certification. Settlement in this case clearly benefits the Class when measuring the strengths of Plaintiff's
15 case and the risk of establishing class wide liability and damages.

16
17 I declare under penalty of perjury under the laws of the State of California that the foregoing is
18 true and correct. Executed this 18th day of November 2022, at San Diego, California.

19
20 /s/ Norman Blumenthal
21 NORMAN B. BLUMENTHAL
22
23

24 ⁴ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

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FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

Aparajit Bhowmik

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

Nicholas J. De Blouw

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

Victoria Rivapalacio

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

Ricardo Ehmman

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2011, California; 2016 Arizona

Educated: University of Michigan (B.A. 2008); California Western School of Law (J.D. 2011)

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

(S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo. Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua Sponte* Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

CLASS ACTION & REPRESENTATIVE CASES

4G Wireless Wage Cases, Orange County Superior Court, JCCP No. 4736; Classic Party Rentals Wage & Hour Cases, Los Angeles Superior Court, Case No. JCCP No. 4672; Abu-Arafeh v. Norco Delivery Service, Inc., San Francisco County Superior Court, Case No. CGC-14-540601; Aburto v. Verizon, U.S. District Court, Southern District California, Case No. 11-cv-0088; Adkins v. Washington Mutual Bank, Class Certification Granted, San Diego County Superior Court, Case No. GIC819546; Agah v. CompUSA, U.S. District Court, Central District of California, Case No. SA CV05-1087 DOC (Anx); Akers v. The San Diego Union Tribune, San Diego County Superior Court, Case No 37-2010-00088571; Altman v. SolarCity Corporation, San Diego County Superior Court, Case No. 37-2014-00023450-CU-OE-CTL; Aquino v. Macy's West Stores, Orange County Superior Court, Case No. 30-2010-00395420; Baker v. Advanced Disability Management, Inc., Sacramento County Superior Court, Case No. 34-2014-00160711; Barcia v. Contain-A-Way, U.S. District Court, Southern District California, Case No. 07 cv 0938; Bates v. Verengo, Inc., Orange County Superior Court, Case No. 30-2012-00619985-CU-OE-CXC; Battle v. Charming Charlie Inc., San Diego

County Superior Court, Case No. 37-2014-00005608; Behar v. Union Bank, Orange County Superior Court, Case No. 30-2009-00317275; Bell v. John Stewart Company, Alameda County Superior Court, Case No. RG14728792; Bennett v. Custom Built Personal Training, Monterey County Superior Court, Case No. M127596; Bermant v. Bank of America, Investment Services, Inc., Los Angeles Superior Court, Civil Action No. BC342505; Bethley v. Raytheon Company, United States District Court, Central District of California, Case No. SACV10-01741; Betorina v. Randstad US, L.P., U.S. District Court Northern District of California, Case No. 3:15-cv-03646-MEJ; Beverage v. Edcoa Inc., Sacramento County Superior Court, Case No. 2013-00138279; Bova v. Washington Mutual Bank / JP Morgan Chase, U.S. District Court, Southern District California, Case No. 07-cv-2410; Bowden v. Sunset Parking Services, LLC & LAZ Parking California, LLC - Settled San Diego County Superior Court, Case No. 37-2012-00101751-CU-OE-CTL; Briseno v. American Savings Bank, Class Certification Granted, Orange County Superior Court, Case No. 774773; Brueske v. Welk Resorts, San Diego Superior Court, Case No 37-2010-00086460; Bueche v. Fidelity National Management Services, U.S. District Court, Eastern District of California, Case No. 13-cv-01114; Bunch v. Pinnacle Travel Services, LLC, Los Angeles County Superior Court, Case No. BC552048; Butler v. Stericycle, Inc & Appletree Answering Services of California, Inc., Sacramento County Superior Court, Case No. 34-2015-00180282; Cabral v. Creative Communication Tech., Class Certification Granted, Los Angeles Superior Court, Case No. BC402239; Cardoza v. Wal-Mart Associates, Inc., U.S. District Court Northern District of California, Case No. 4:15-cv-01634-DMR; Castro v. Vivint Solar, Inc., San Diego County Superior Court, Case No. 37-2014-00031385-CU-OE-CTL; Cavazos v. Heartland Automotive Services, Inc., Riverside County Superior Court, Case No. PSC 1401759; Cohen v. Bosch Tool, San Diego Superior Court, Case No. GIC 853562; Comstock v. Washington Mutual Bank - Class Certification Granted, San Diego County Superior Court, Case No. GIC820803; Conley v. Norwest, San Diego County Superior Court, Case No. N73741; Connell v. Sun Microsystems, Alameda Superior Court, Case No. RG06252310; Corrente v. Luxe Valet, Inc., San Francisco County Superior Court, Case No. CGC-15-545961; Cruz v. Redfin Corporation, U.S. District Court Northern District of California, Case No. 3:14-cv-05234-THE; Culley v. Lincare Inc. & Alpha Respiratory Inc., U.S. District Court eastern District of California, Case No. 2:15-cv-00081-GEB-CMK; Cunningham v. Leslie's Poolmart, Inc., U.S. District Court, Central District of California, Case No. 13-cv-02122-CAS; Curry v. California Testing Bureau/McGraw Hill, U.S. District Court, Northern District of California, Case No. C-05-4003 JW; Daniels, et al. v. Philip Morris,(In Re Tobacco Cases II) – Class Certification Granted, San Diego Superior Court, Case No. JCCP 4042; Davis v. Genex Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Dairy, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figueroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern

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Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior County, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between plaintiff Kathrynne Martinez-Lopez (“Plaintiff”) and defendant MedAmerica, Inc. (“Defendant”). Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the Class Action Complaint that was filed in California state court and any amendments thereto, which is captioned *Kathryne Martinez-Lopez v. MedAmerica, Inc.*, Case No. 37-2020-00034393-CU-OE-CTL, pending in Superior Court of the State of California, County of San Diego.
- B. “Aggrieved Employees” means all individuals who worked for Defendant in California as non-exempt employees at any time during the PAGA Period.
- C. “Class” means all current and former non-exempt employees employed by MedAmerica, Inc., who worked in California at any time during the Class Period.
- D. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Christine T. LeVu and Andrew Ronan of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and costs, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation costs billed in connection with the Action.
- F. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her employee identification number; his or her email address (if known); and his or her dates of employment and/or the number of pay periods worked during the Class Period as a Class Member and the number of pay periods worked during the PAGA Period as an Aggrieved Employee.
- G. “Class Member” is a member of the Class.
- H. “Class Notice” means the Notice of Proposed Settlement of Class Action and

Hearing Date for Final Court Approval substantively in the form attached as Exhibit A to this Agreement and incorporated by reference into this Agreement.

- I. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).
- J. “Class Period” means the period of time from April 15, 2019 through the earlier of preliminary approval or October 15, 2021.
- K. “Class Representative Service Payment” means the service payment made to the Plaintiff in her capacity as Class Representative in order to compensate her for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiff.
- L. “Court” means the Superior Court of California, County of San Diego.
- M. “Defendant” means MedAmerica, Inc.
- N. “Defendant’s Counsel” means Barbara Antonucci, Anthony Sbardellati, , and Nicholas Morrell of Constangy, Brooks, Smith & Prophete, LLP.
- O. “Effective Date” means the date when the Settlement becomes final, which is 65 days after the date when the Final Approval Order and Judgment in this Action is entered, unless there is an appeal. If there is an appeal, the Effective Date will be the date on which (a) all such appeals have been dismissed; or (b) the appropriate Court of Appeals has entered a final judgment affirming the Final Approval Order and Judgment, which (i) is no longer subject to any further appellate challenge, or (ii) has been affirmed by the California Supreme Court, whichever is earlier.
- P. “Election Not to Participate in Settlement” means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- Q. “Final” means the last of the following dates, as applicable:
 - 1. If no objection to the Settlement is made, the date that is 65 days after the date the Judgment is entered.
 - 2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.
 - 3. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.

- R. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- S. “Gross Settlement Amount” means Four Hundred Thousand Dollars (\$400,000) to be paid by Defendant as provided by this Agreement, in full satisfaction of the claims released herein. This Gross Settlement Amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments required under this Agreement, including the Settlement Shares to the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, but excluding any employer-side payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages (any such employer-side payroll taxes shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant). The Gross Settlement Amount is all in with no reversion to Defendant and shall be paid without the need to submit a claim form. With the exception of employer-side payroll taxes, the Gross Settlement Amount is the maximum amount to be paid by Defendant under this Agreement, subject to the accelerator clause set forth in Section III.D.5., below.
- T. “Judgment” means the Final Approval Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- U. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses.
- V. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- W. “PAGA Payment” means the \$25,000 portion of the Gross Settlement Amount, which shall be allocated (a) 75% (\$18,750) to the LWDA as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and (b) 25% (\$6,250) to the Aggrieved Employees to be distributed on a pro rata basis, based on their respective number of pay periods worked during the PAGA Period.
- X. “PAGA Period” means the period of time from April 15, 2019 through the earlier of the date of preliminary approval of the settlement or October 15, 2021.
- Y. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.

- Z. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- AA. “Released Parties” collectively mean: Defendant, and all entities affiliated with Defendant, and all officers, directors, representatives, owners, partners, subsidiaries, parent companies, affiliates, joint venturers, clients, joint employers, predecessors, managers, servants, successors-in-interest, assigns, current and former employees of the Company, including but not limited to all agents, insurers, attorneys and all persons or entities acting in concert with or affiliated with any of them.
- BB. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
- CC. “Settlement Administrator” means the third party settlement administrator proposed by the Parties, as approved by the Court.
- DD. “Settlement Share” means each Participating Class Member’s respective share of the Net Settlement Amount, as calculated and provided by the terms of this Agreement.

II. RECITALS

- A. On September 28, 2020, Plaintiff filed a Representative Action Complaint against Defendant in the Superior Court of the State of California, County of San Diego (*Kathryne Martinez-Lopez v. MedAmerica, Inc.*, Case No. 37-2020-00034393-CU-OE-CTL). In her Complaint, Plaintiff asserted a single cause of action against Defendant seeking recovery of civil penalties under the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. ("PAGA").
- B. On November 24, 2020, Defendant filed an Answer to Plaintiff’s Complaint.
- C. On July 13, 2021, the Parties participated in an all-day mediation presided over by Steven J. Rottman, Esq., a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, agreed to settle the Action based upon a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties as pertains to the matters resolved herein.
- D. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant’s defenses in

the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **First Amended Complaint.** Plaintiff will, concurrent with the filing of the motion for preliminary approval, amend the Complaint pending in the Superior Court of the State of California for the County of San Diego to add class action allegations limited to the Class and Class Period and to add the following causes of action under California law on behalf of the Class: (1) failure to provide meal periods or pay premium wages for missed, denied, or unauthorized meal periods; (2) failure to provide rest breaks, or premium wages for missed, denied, or unauthorized rest breaks; (3) failure to pay overtime wages; (4) failure to pay minimum wage, including the prevailing minimum wage, off-the-clock claims, and payment for all hours worked; (5) failure to timely pay wages during employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records, including failure to keep accurate and complete payroll records (8) failure to furnish accurate itemized wage statements or provide fully and accurately itemized wage statements; (9) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10) California Civil Code section 558 penalties and civil penalties pursuant PAGA and (11) unfair and unlawful business practices, in violation of Business and Professions Code section 17200 *et. seq.* Defendant's Counsel shall stipulate to the filing of the First Amended Complaint, the form of which is attached as **Exhibit D** to this Agreement and incorporated herein by this reference. However, in the event that final approval of the Settlement is not granted by the Court, Plaintiff shall dismiss the class claims added to the First Amended Complaint without prejudice, and seek leave from the Court to make any such amendments (i.e., the agreement to amend the complaint to add class claims is conditioned on the final approval of this Settlement).
- B. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is Four Hundred Thousand Dollars (\$400,000), in full satisfaction of the claims released herein. This amount is all-inclusive of all payments contemplated in this Settlement, including but not limited to (1) Plaintiff's counsel's fees and costs, (2) the incentive award to Plaintiff, (3) the PAGA portion of the settlement payable to the state, and (4) the costs of administration, excluding only the employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which shall be separately paid by Defendant to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant. As discussed further in

paragraph III.D.5, below, the Gross Settlement Amount assumes and is inclusive of a pro rata increase in the 9,732 pay periods worked by the Class Members (during the period from April 15, 2019 through May 7, 2021) through the earlier of preliminary approval or October 15, 2021, plus a 10% margin of error. With the exception of employer-side payroll taxes, the Gross Settlement Amount is the maximum amount to be paid by Defendant under this Agreement, subject to the accelerator clause set forth in Section III.D.5., below.

C. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To Plaintiff:** In addition to the Settlement Shares to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$10,000 as a Class Representative Service Payment. Defendant will not oppose a Class Representative Service Payment of no more than \$10,000 for Plaintiff. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$10,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payments and instead a Form 1099 will be issued to Plaintiff with respect to that payment, and Plaintiff will assume full responsibility and liability for the taxes due on her Class Representative Service Payment.
2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than one-third (1/3) of the Gross Settlement Amount, which is presently \$133,333, as their Class Counsel Fees Payment and an amount not more than \$30,000 for all costs incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses Payment. Defendant will not oppose Class Counsel's request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, which are presently \$133,333, and \$30,000 respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment shall be made to Class Counsel.

3. **The PAGA Payment.** The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out of the Gross Settlement Amount, which shall be allocated (a) 75% (\$18,750) to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and (b) 25% (\$6,250) to the Aggrieved Employees to be distributed on a pro rata basis, based on their respective number of pay periods worked during the PAGA Period. If the Court approves a PAGA Payment of less than \$25,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. All Aggrieved Employees will be sent their pro rata share of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below, regardless of whether they opt out of the Settlement. One hundred percent (100%) of the PAGA Payment is in settlement of claims for civil penalties under PAGA and is not subject to wage withholdings, and shall be reported on IRS Form 1099.
4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$10,000 ("Settlement Administration Expenses"). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$10,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

D. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** Each Participating Class Member will be entitled, provisionally, to a share or shares of the Net Settlement Amount. The Settlement Share for each Participating Class Member will be calculated as follows: (i) Defendant shall provide the Settlement Administrator with the dates of employment for all Participating Class Members during the Class Period; (ii) the Settlement Administrator shall then divide the Net Settlement Amount by the total number of pay periods worked by all Participating Class Members as reflected in their dates of employment to determine a dollar amount per week ("Pay Period Rate"); and (iii) the Settlement Administrator shall then take the number of pay periods worked by each Participating Class Member, individually, and multiply it

by the Pay Period Rate to calculate each Participating Class Member's respective Settlement Share.

3. **Withholding.**

- a. Subject to approval by the Court, 20% of each Participating Class Member's Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion shall be subject to wage withholdings, shall be reported on IRS Form W-2, and the employee-side taxes on the Wages Portion shall be paid for from the Gross Settlement Amount. The Settlement Administrator shall be responsible for remitting to the tax authorities employees' and employer's share of all payroll taxes on the Wage Portion.
- b. Subject to approval by the Court, 80% of each Participating Class Member's Settlement Share is in settlement of claims for interest and for penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.
- c. The Participating Class Members agree to hold harmless Defendant, Class Counsel, and Defendant's Counsel for any tax liability, including penalties and interest, arising out of or relating to the Participating Class Members' failure to pay taxes on any amounts paid pursuant to this Settlement.
- d. Approval of the tax allocations above is not a material term of this Agreement. If the Court approves a different tax allocation of payment, then the other terms of this Agreement shall remain in effect.

4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares.

5. **Class Size Modification.** Defendant has represented that the Class consists of an estimated total of 291 Class Members who worked for 9,732 pay periods at any time from April 15, 2019 to May 7, 2021. The Parties assume that the number of pay periods worked by the Class Members will increase *pro rata* from May 8, 2021 through the earlier of preliminary approval or October 15, 2021. Should the number of pay periods worked

during the Class Period exceed 10% of this estimate (i.e., the “estimate” equaling 9,732 pay periods plus the assumed pro rata growth in that number from May 8, 2021 through the earlier of preliminary approval or October 15, 2021), Defendant agrees to a pro rata increase to the Gross Settlement Amount by the same number of percentage points as the pay periods exceed 10% of the estimate, up to a maximum of \$25,000, after which the Parties will meet and confer to discuss whether Defendant would exercise an option to roll back the Class Period so that no more than 10% extra pay periods are added to the Release Period.

- E. **Appointment of Settlement Administrator.** After obtaining a quote from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint ILYM Group as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator’s duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member’s new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; generating, issuing, and mailing the tax reports and any and all tax forms (including, without limitation, forms W-2 and 1099 reflecting payments to the Class Members) required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member’s Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, the checks, and the tax forms, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers’ and employees’ share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

- F. **Procedure for Approving Settlement.**

1. **Motion for Preliminary Approval of Settlement by the Court.**

- a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the “Motion for Preliminary Approval”). Before filing the Motion for Preliminary Approval, Class Counsel will provide Defendant’s Counsel with at least 7 days to review and provide comments on that document. Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution.
 - b. Upon filing the Preliminary Approval Motion, Plaintiff will submit the proposed settlement agreement to the LWDA, pursuant to Labor Code section 2699(1)(2).
 - c. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
 - d. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court’s approval.
2. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member’s Settlement Share) as follows:
- a. No later than 30 days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member’s Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone other than the Settlement Administrator, except as required to applicable taxing authorities, in order to carry out the reasonable

efforts described in section III.E.2.c., pursuant to Defendant's express written authorization, or by order of the Court. The Settlement Administrator shall not disclose the Class Data to Class Counsel or anyone else, except as noted in the foregoing sentence. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if additional disclosures are necessary, Class Counsel will obtain written authorization of Defendant and/or an order from the Court.

- b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find a more current address, if necessary. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the response date for written objections, disputes and opt-outs will be extended an additional 15 days for the affected Class Member, only, and the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the

date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than 10 days before the date by which the Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Dates of Employment allocated to Class Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payment. Class Members may also submit disputes as to pay periods allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payment may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator, postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. If a Class Notice Packet is re-mailed, the response date for written objections for the affected Class Member, only, will be extended an additional 15 days. Alternatively, Participating Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payment. Non-

Participating Class Members shall have no ability to comment on or object to the Settlement.

- b. **Disputes as to Pay Periods Worked.** Each Class Member shall also have forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets in which to dispute the pay periods worked that the Class Notice allocates to them during the Class Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendant's Counsel, where applicable. If a Class Notice Packet is re-mailed, the response date for disputes will be extended an additional 15 days for the affected Class Member, only.
- c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. If a Class Notice Packet is re-mailed, the response date for opt-outs will be extended an additional 15 days for the affected Class Member, only. To be valid, an Election Not to Participate in Settlement must be timely returned to the Settlement Administrator and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that an Aggrieved Employee will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of their request for exclusion from the Settlement. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above and in the Class Notice will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be

permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims and the Released PAGA Claims by the Participating Class Members set forth in this Agreement.

- d. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administrator will provide Class Counsel and Defendant's Counsel with a complete and accurate list all Non-Participating Class Members.

- 4. **Right of Defendant to Reject Settlement.** If the number of Class Members who timely submit valid Elections Not to Participate in Settlement exceeds ten percent (10%) of the Class, Defendant, at its sole discretion, shall have the right but not the obligation to revoke the Settlement. Defendant shall exercise its revocation rights, if at all, within fourteen (14) days of the receipt of the Settlement Administrator's Report, referenced in Section III.F.3.d., above, by providing written notice of that revocation to Class Counsel. If Defendant exercises its revocation rights, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Settlement Administration Expenses actually incurred by the Settlement Administrator as of the date that Defendant exercises the right to revoke the Settlement pursuant to this Paragraph will be paid by Defendant.
- 5. **No Solicitation.** The Parties and their respective counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. Further, Class Counsel represents that they have not encouraged other employees to opt out or to pursue any individual claims whatsoever against Defendant.
- 6. **Additional Briefing and Final Approval.**
 - a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment no later than the date Plaintiff

files the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.

- b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses. Before filing the motion for final approval, Class Counsel will provide Defendant's Counsel with at least 7 days to review and provide comments on that document.
- c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval, and Plaintiff and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payments, and the Class Counsel Litigation Expenses Payment.
- d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), the Settlement shall be considered void ab initio and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose whatsoever.
- e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached as Exhibit C to this Agreement. Within 10 days of entry of the final approval order, Class Counsel will submit a copy thereof to the LWDA as required by Labor Code § 2699(1)(3). After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to,

a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement Agreement for the approval of the Court not later than thirty (30) days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited to the sum of the Gross Settlement Amount.
9. **Timing of Settlement Funding and Provision of Settlement Shares and Other Payments.** Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within fifteen (15) days of the Effective Date. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment and the PAGA Payment in accordance with this Agreement.
10. **Uncashed Settlement Share Checks. Uncashed Settlement Share Checks.** A Participating Class Member or Aggrieved Employee must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected individual at his or her correct address by use of available

email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Settlement Administrator will also send the individual a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60 day period after this notice, the funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check, and the Participating Class Member or Aggrieved Employee will remain bound by the Settlement. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members or Aggrieved Employees, whether or not they all cash their Settlement Share checks.

11. **Final Report by Settlement Administrator to Court.** Within ten (10) days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

G. Release of Claims.

1. **Participating Class Members.** As of the Effective Date, the Participating Class Members will release Defendant and the other Released Parties from all claims as pled in the First Amended Complaint which will include class claims based on the facts of the operative Complaint including claims for (1) failure to provide meal periods or pay premium wages for missed, denied or unauthorized meal periods; (2) failure to provide rest breaks, or pay premium wages for missed, denied or unauthorized rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages, including the prevailing minimum wage, off-the-clock claims, and payment for all hours worked; (5) failure to timely pay wages during employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records, including failure to keep accurate and complete payroll records; (8) failure to furnish accurate itemized wage statements or provide fully and accurately itemized wage statements; (9) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10) California Civil Code section 558 penalties and civil penalties pursuant to PAGA; and (11) unfair and unlawful business practices, as well as any known or unknown wage and hour claims that were asserted or could have been asserted based on the factual allegations contained in the operative Complaint as amended. This includes claims for unpaid wages, meal periods and rest breaks and related

penalties, expense reimbursements, waiting time penalties, payroll stub violations and claims for civil penalties under Labor Code section 2698 et seq., Labor Code sections 201-204 et seq., 210, 226, 226.3, 226.7, 232, 232.5, 351, 432.5, 510, 511, 512, 515, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5(k), 1198, 1199, 2699.3, 2802, IWC Wage Orders 4-2001 and 7(A)(3), and any other applicable wage orders, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B) and Title 8, Section 11070(14), Business and Professions Code section 17200 et seq., and claims or potential claims for attorneys' fees and costs ("Released Class Claims"). The Class Release shall include all Released Class Claims during the Class Period.

2. **Aggrieved Employees.** As of the Effective Date, the Aggrieved Employees will release Defendant and the other Released Parties from any and all PAGA claims for civil penalties premised upon the facts and allegations in the Complaint or First Amended Complaint as well as any and all claims for civil penalties that were asserted or could have been asserted based on the factual allegations contained in the Complaint, First Amended Complaint, or any amended complaints which arose during the PAGA Period ("Released PAGA Claims"). This Agreement shall also be effective to adjudicate and release the claims and/or rights of the LWDA to recover civil penalties against the Released Parties on behalf of the Aggrieved Employee for any of the Released PAGA Claims (i.e., the Judgment on this Settlement will have res judicata effect as to those Released PAGA Claims of the LWDA, whether pursued directly by the LWDA or by a representative pursuant to PAGA). The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees and the LWDA, regardless of whether an Aggrieved Employee submitted an Election Not to Participate in Settlement (i.e., the Judgment on this Settlement will have res judicata effect as to the PAGA claim for all Aggrieved Employees, regardless of whether they opt-out of the Settlement).
3. **Plaintiff.** As of the Effective Date, Plaintiff will release the Defendant and the other Released Parties from all Plaintiff's individual claims relating to her employment with Defendant. This includes all Plaintiff's individual claims plead in the operative Complaint and to be pled in the Amended Complaint that will add class claims based on the facts of the operative Complaint, and any further amended pleading as necessary, with corresponding California Civil Code section 1542 waiver for any and all claims, known or unknown, relating to Plaintiff's employment with Defendant, including but not limited to claims for (1) failure to provide meal periods or pay premium wages for missed, denied or unauthorized meal periods; (2) failure to provide rest breaks, or pay premium wages for missed, denied or unauthorized rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages, including but not limited to the

prevailing minimum wage, off-the-clock claims, and payment for all hours worked; (5) failure to timely pay wages during employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records, including failure to keep accurate and complete payroll records; (8) failure to furnish accurate itemized wage statements or provide fully and accurately itemized wage statements; (9) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10) California Civil Code section 558 penalties and civil penalties pursuant to PAGA; and (11) unfair and unlawful business practices, as well as any and all wage and hour claims that were asserted or could have been asserted based on the factual allegations contained in the operative Complaint, or in the amended complaint to be filed that will add class claims based on the facts of the operative Complaint, with a corresponding California Civil Code section 1542 waiver for Plaintiff. This includes, but is not limited to, claims for unpaid wages, waiting time penalties, payroll stub violations and all other associated penalties, including but not limited to claims for civil penalties under Labor Code section 2698 et seq., Labor Code sections 201-204 et seq., 210, 216, 221-223, 226, 226.3, 226.7, 232, 232.5, 245-248.5, 256, 266.8, 351, 432.5, 510, 511, 512, 515, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5(k), 1198, 1199, 2699.3, 2802, IWC Wage Orders 4-2001 and 7(A)(3), and any other applicable wage orders, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B) and Title 8, Section 1 1070(14), Business and Professions Code section 17200 et seq., and claims or potential claims for attorneys' fees and costs. Plaintiff's individual release shall include all such released claims from the beginning of time through the date of preliminary approval of the Settlement. ("Plaintiff's Released Claims"). This release of Plaintiff's Released Claims releases the Released Parties from any claim that Plaintiff could maintain in any action against any Released Party that occurred from the beginning of time through the date of preliminary approval of the Settlement. Notwithstanding the foregoing, this waiver and release of claims does not extend to any rights which as a matter of law cannot be waived and released by private agreement, including rights to sue to enforce this Agreement and rights to vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits and claims outside the Class Period.

Plaintiff acknowledges that she may discover facts or law different from, or in addition to the facts or law that she knows or believes to be true with respect to the claims and matters released by way of this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full

and complete releases, and that they intend that the releases herein shall be final and complete.

4. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiff's Released Claims shall include all such claims, whether known or unknown, by the releasing party. Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that she now knows or believes to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

5. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.
- H. **Res Judicata.** The Parties agree that the Judgment following this Agreement is intended to have res judicata effect on the Released Class Claims, Released PAGA Claims, and Plaintiff's Released Claims.
- I. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (e.g., such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- J. **Limitation on Public Statements About Settlement.** Class Counsel shall not publicize the Settlement prior to the Court granting preliminary approval, other than by filing documents with the Court as anticipated in this Agreement. Plaintiff and Class Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement. If Plaintiff or Class Counsel receives an inquiry about the Settlement from the media, they will only respond by stating that the lawsuit exists and has been resolved. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit

Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members after preliminary approval. Nothing in this provision shall prevent Defendant or Plaintiff from making any disclosures required hereunder or by applicable law.

K. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any respect, that they have any liability to anyone under the claims asserted (or to be asserted) in the Action, or that, but for the Settlement, a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate. The Parties have entered into this Settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff that Plaintiff's claims do not have merit or that class action treatment is inappropriate.
- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further

proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may only be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any potential amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in section III.K.3 hereinabove, this Agreement, and any and all parts of it, may be amended,

modified, changed, or waived only by an express written instrument signed by all Parties or their expressly authorized representatives.

7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the fifth business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037

Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Barbara Antonucci
Anthony Sbardellati
Nicholas Morrell
Constangy, Brooks, Smith & Prophete, LLP
601 Montgomery Street, Suite 350
San Francisco, CA 94111
Tel.: (415) 918-3000
Fax: (415) 918-3001
Email: bantonucci@constangy.com
asbardellati@constangy.com
nmorrell@constangy.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree pursuant to CCP section 583.330, upon the signing of this Agreement, to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation with Steven J. Rottman on July 13, 2021 until the earlier of the Effective Date or the date this Agreement shall not longer be of any force or effect.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

[Signatures follow on next page]

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

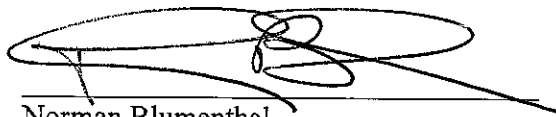
Dated: Nov 29, 2021


Kathryn Martinez (Nov 29, 2021 12:20 PST)
Plaintiff Kathryn Martinez-Lopez

Dated: _____

Mitchell Cohen
Executive Vice President & General Counsel
For Defendant MedAmerica, Inc.

Dated: 11/29/21


Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: _____

Barbara Antonucci
Anthony Sbardellati
Nicholas Morrell
Constangy, Brooks, Smith & Prophete, LLP
Attorney for Defendant

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____

Plaintiff Kathryn Martinez-Lopez

Dated: 11/29/2021

DocuSigned by:

D8817862525C4B2...

Mitchell Cohen
Executive Vice President & General Counsel
For Defendant MedAmerica, Inc.

Dated: _____

Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: 11/29/2021



Barbara Antonucci
Anthony Sbardellati
Nicholas Morrell
Constangy, Brooks, Smith & Prophete, LLP
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

**(Kathryne Martinez-Lopez v. MedAmerica, Inc., Superior Court of the State of California,
County of San Diego, Case No. 37-2020-00034393-CU-OE-CTL)**

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<__>>. See the explanation in Section 5 below. If you do nothing, you will be considered a Participating Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the Settlement Share payment, you will release the Released Class Claims as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement and you will not be bound by the Settlement. However, if you are an Aggrieved Employee who opts out, you will still be paid your allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion. If you choose to do so, you must notify the Settlement Administrator as explained in Section 7 below.
Object	Write to the Court about why you do not agree with the settlement or appear at the Final Approval Hearing to make an oral objection. Instructions are provided in Section 8 below.

Your options are further explained in this Class Notice. To exclude yourself from, or object to, the settlement you must take action by certain deadlines. If you want the Settlement as proposed, you don't need to do anything to obtain your share of the Settlement. Defendant will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of the above-captioned action pending in the Superior Court of the State of California, in and for the County of San Diego (the "Court") has been reached between Plaintiff Kathryne Martinez-Lopez ("Plaintiff") and Defendant MedAmerica, Inc. ("Defendant") and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All current and former non-exempt employees employed by MedAmerica, Inc., who worked in California at any time during the Class Period.

The Class Period is April 15, 2019 through October 15, 2021.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On September 28, 2020, Plaintiff filed a Representative Action Complaint against Defendant in the Superior Court of the State of California, County of San Diego (the "Complaint"), alleging a single cause of action against Defendant seeking recovery of civil penalties under the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. ("PAGA").

On _____, Plaintiff filed a First Amended Complaint against Defendant to add class action allegations limited to the Class and Class Period and to add the following causes of action under California law on behalf of the Class: (1) failure to provide meal periods or pay premium wages for missed, denied, or unauthorized meal periods; (2) failure to provide rest breaks, or premium wages for missed, denied, or unauthorized rest breaks; (3) failure to pay overtime wages; (4) failure to pay minimum wage, including the prevailing minimum wage, off-the-clock claims, and payment for all hours worked; (5) failure to timely pay wages during employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records, including failure to keep accurate and complete payroll records; (8) failure to furnish accurate itemized wage statements or provide fully and accurately itemized wage statements; (9) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10) California Civil Code section 558 penalties and civil penalties pursuant PAGA; and (11) unfair and unlawful business practices, in violation of Business and Professions Code section 17200 *et. seq.* This lawsuit is referred to as the "Action".

Defendant denies and disputes all such claims. Specifically, Defendant contends that Plaintiff and the Class Members were properly compensated for wages under California law; that Plaintiff and the Class Members were provided with meal and rest periods in compliance with California law; that Defendant complied with California wage statement requirements; that Defendant did not fail to provide required reimbursement of expenses; that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action; and that this Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Four Hundred Thousand Dollars (\$400,000) (the “Gross Settlement Amount”) to fund the settlement of this Action. The Gross Settlement Amount includes all payments of Settlement Shares to Class Members contemplated by the Settlement, the Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment for civil penalties. Any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages shall be separately paid by Defendant.

Within fifteen (15) days of the Effective Date, Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. The “Effective Date” means the date when the Settlement becomes final, which is 65 days after the date when the Final Approval Order and Judgment in this Action is entered, unless there is an appeal. If there is an appeal, the Effective Date will be the date on which (a) all such appeals have been dismissed; or (b) the appropriate Court of Appeals has entered a final judgment affirming the Final Approval Order and Judgment, which (i) is no longer subject to any further appellate challenge, or (ii) has been affirmed by the California Supreme Court, whichever is earlier.. Fifteen (15) days after the settlement is funded, the Settlement Administrator will mail checks for the Settlement Shares to Participating Class Members.

Amounts to be Paid From the Gross Settlement Amount. The proposed payments subject to Court approval will be deducted from the Gross Settlement Amount before Settlement Shares are made to Class Members who do not request exclusion (“Participating Class Members”):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$10,000, for expenses, including without limitation expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing Settlement Shares and tax forms, and handling inquiries and uncashed checks.
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount, which is presently \$133,333 and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$30,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- Class Representative Service Payment. Class Representative Service Payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to the Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook. The amount stated is what Plaintiff will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Payment. A payment of \$25,000 relating to the claim for penalties under the Private Attorneys General Act (“PAGA”), \$18,750 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA Payment”). The remaining \$6,250 will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period (April 15, 2019 to October 15,

2021). The “Aggrieved Employees” are all individuals who worked for Defendant in California as non-exempt employees at any time during the PAGA Period. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the Settlement.

Calculation of Payments to Class Members. After all of the payments of the Court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount”, shall be distributed as Settlement Shares to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$ [REDACTED], based upon the above proposed deductions. Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member, which shall be calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the total number of pay periods worked by all Participating Class Members as reflected in their dates of employment to determine a dollar amount per week (“Pay Period Rate”); and (b) the Settlement Administrator shall then take the number of pay periods worked by each Participating Class Member, individually, and multiply it by the Pay Period Rate to calculate each Participating Class Member’s respective Settlement Share.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty percent (20%) of each Participating Class Member’s Settlement Share is in settlement of wage claims (the “Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Eighty percent (80%) of each Participating Class Member’s Settlement Share is in settlement of claims for interest and for penalties allegedly due to employees (collectively the “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant’s Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date, the Participating Class Members will release Defendant and the other Released Parties from all claims as pled in the First Amended Complaint which will include class claims based on the facts of the operative Complaint including claims for (1) failure to provide meal periods or pay premium wages for missed,

denied or unauthorized meal periods; (2) failure to provide rest breaks, or pay premium wages for missed, denied or unauthorized rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages, including the prevailing minimum wage, off-the-clock claims, and payment for all hours worked; (5) failure to timely pay wages during employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records, including failure to keep accurate and complete payroll records; (8) failure to furnish accurate itemized wage statements or provide fully and accurately itemized wage statements; (9) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10) California Civil Code section 558 penalties and civil penalties pursuant to PAGA; and (11) unfair and unlawful business practices, as well as any known or unknown wage and hour claims that were asserted or could have been asserted based on the factual allegations contained in the operative Complaint as amended. This includes claims for unpaid wages, meal periods and rest breaks and related penalties, expense reimbursements, waiting time penalties, payroll stub violations and claims for civil penalties under Labor Code section 2698 et seq., Labor Code sections 201-204 et seq., 210, 226, 226.3, 226.7, 232, 232.5, 351, 432.5, 510, 511, 512, 515, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5(k), 1198, 1199, 2699.3, 2802, IWC Wage Orders 4-2001 and 7(A)(3), and any other applicable wage orders, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B) and Title 8, Section 1 1070(14), Business and Professions Code section 17200 et seq., and claims or potential claims for attorneys' fees and costs ("Released Class Claims"). The Class Release shall include all Released Class Claims during the Class Period.

This means that, if you do not timely exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any other Released Party about Released Class Claims resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released PAGA Claims. As of the Effective Date, the Aggrieved Employees will release Defendant and the other Released Parties from any and all PAGA claims for civil penalties premised upon the facts and allegations in the Complaint or First Amended Complaint as well as any and all claims for civil penalties that were asserted or could have been asserted based on the factual allegations contained in the Complaint, First Amended Complaint, or any amended complaints which arose during the PAGA Period ("Released PAGA Claims"). The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted an Election Not to Participate in Settlement (i.e., the Judgment on this Settlement will have res judicata effect as to the PAGA claim for all Aggrieved Employees, regardless of whether they opt-out of the Settlement). This Settlement shall also be effective to adjudicate and release the claims and/or rights of the LWDA to recover civil penalties against the Released Parties on behalf of the Aggrieved Employee for any of the Released PAGA Claims (i.e., the Judgment on this Settlement will have res judicata effect as to those Released PAGA Claims of the LWDA, whether pursued directly by the LWDA or by a representative pursuant to PAGA).

5. How much will my payment be?

The Pay Period Rate is estimated to be <<\$_____>>. Defendant's records reflect that you have worked <<____>> pay periods for Defendant during the Class Period (April 15, 2019 to October 15, 2021).

Based on this information, your estimated Settlement Share from the Net Settlement Amount is << _____ >>.

If you wish to challenge the information set forth above, then you must submit a written and signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [forty-five (45) days after the mailing of the Class Notice or 60 days after the Class Notice in the case of re-mailing].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your Settlement Share will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator can be contacted at : _____ or (800) _____.

The Court will hold a Final Approval Hearing on _____, 2022, at _____ to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service award to the Plaintiff. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately three months after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will not receive a Settlement Share from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendants for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless whether they submit a request for exclusion.

To opt out, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than _____ [forty-five (45) days after the date of the Class Notice or 60 days after the Class Notice in the case of re-mailing]. The request to opt-out must be postmarked or received by the Settlement Administrator by this deadline and should: (1) contain a clear statement that you are requesting to opt out of, or be excluded from the Class and Released Class Claims in the *Martinez-Lopez v. MedAmerica, Inc.* lawsuit; (2) contain the name, address, and the last four digits of the Social Security Number of the person requesting exclusion; (3) state the Class Member's request to exclude himself or herself from the Settlement and to opt out of the Settlement; and (4) be signed by the Class Member or his or her lawful representative. Please include the name and number of the case, which is *Martinez-Lopez v. MedAmerica, Inc.*, Case No. 37-2020-00034393. The request to opt-out must be signed by you. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned may be rejected; and if so, those Class Members will remain bound by the Settlement and the Released Class Claims described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys' fees, the costs and/or the service awards, either in writing or in person. Objections that are in writing should state the Class Member's name, current address, telephone number, and the dates of employment in California by Defendants, and describe why you believe the Settlement is unfair. All written objections or other correspondence should also state the name and number of the case, which is *Martinez-Lopez v. MedAmerica, Inc.*, in the Superior Court of the State of California, County of San Diego, Case No. 37-2020-00034393.

All written objections must be mailed to the Settlement Administrator at _____, no later than _____ [forty-five (45) days after the date of the Class Notice or 60 days after the Class Notice in the case of re-mailing].

Alternatively, Class Members may appear remotely at the Final Approval Hearing on _____ at _____ to make an oral objection without submitting a written objection or to otherwise participate in the Final Approval Hearing. Check the Court's website for the most current information concerning appearances and procedures at the Court - <https://www.sdcourt.ca.gov/sdcourt/generalinformation/covid-19info>. For assistance in making an appearance at the Final Approval Hearing, please contact Class Counsel below.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Settlement Share.

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

Barbara Antonucci
Anthony Sbardellati
Nicholas Morrell
Constangy, Brooks, Smith & Prophete, LLP
601 Montgomery Street, Suite 350
San Francisco, CA 94111

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, at the San Diego County Superior Court, located at 330 West Broadway, San Diego, CA 92101, in Department 68 before Judge Richard S. Whitney. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiff. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating in the Final Approval

Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Martinez-Lopez v. MedAmerica, Inc.* In addition, hearing dates are posted on the Internet via the Register of Actions page for the California Superior Court for the County of San Diego (<https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>) and entering the Case No. 37-2020-00034393.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Martinez-Lopez v. MedAmerica, Inc.* Settlement Administrator, c/o _____; or contact Class Counsel at 1-858-551-1223.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval, or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Martinez-Lopez v. MedAmerica, Inc.* You may also get more details by examining the Court's file on the Internet via the Register of Actions for the San Diego County Superior Court (<https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>) and entering the Case No. 37-2020-00034393. If you wish to view the Court files in person, you must make an appointment with the Clerk's Office at the Hall of Justice, 330 West Broadway, San Diego, CA 92101.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date will be printed on the check. In such event, the Settlement Administrator shall pay all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check where the individual may claim the money.
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

KATHRYNE MARTINEZ-LOPEZ, et al.,

Plaintiffs,

v.

MEDAMERICA, INC., a Corporation, and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **37-2020-00034393-CU-OE-CTL**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date:

Hearing Time:

Judge: Hon. Richard S. Whitney

Dept.: 68

Action Filed: September 28, 2020

Trial Date: None Set

PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable Richard S. Whitney of the Superior Court
2 of the State of California, in and for the County San Diego, on _____[DATE], for the
3 motion by Plaintiff Kathryne Martinez-Lopez (“Plaintiff”) for preliminary approval of the class
4 settlement with Defendant MedAmerica, Inc. (“Defendant”). The Court, having considered the
5 briefs, argument of counsel and all matters presented to the Court and good cause appearing,
6 hereby GRANTS Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

7
8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action Settlement Agreement
10 (“Agreement”) attached as Exhibit ____ to the Declaration of Kyle Nordrehaug in Support of
11 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This is based on the
12 Court’s determination that the Settlement set forth in the Agreement is within the range of possible
13 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
14 and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. The Gross Settlement Amount is Four Hundred Thousand Dollars (\$400,000). It
18 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate
19 and reasonable as to all potential Class Members when balanced against the probable outcome of
20 further litigation and the significant risks relating to certification, liability and damages issues. It
21 further appears that investigation and research have been conducted such that counsel for the
22 Parties are able to reasonably evaluate their respective positions. It further appears to the Court
23 that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid
24 the delay and risks that would be presented by the further prosecution of the Action. It further
25 appears that the Settlement has been reached as the result of serious and non-collusive, arms-
26 length negotiations. The Court therefore preliminarily finds that the Settlement is fair, adequate,

1 and reasonable when balanced against the probable outcome of further litigation and the
2 significant risks relating to certification, liability, and damages issues.

3 4. The Agreement specifies for an attorneys' fees award not to exceed one-third (1/3)
4 of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$30,000,
5 and proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
6 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
7 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
8 supporting these requests, including lodestar, at the time of final approval.

9 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
10 certification of a class for settlement purposes only. This stipulation will not be deemed
11 admissible in this or any other proceeding should this Settlement not become final. For settlement
12 purposes only, the Court conditionally certifies the following Class: "all current and former non-
13 exempt employees employed by MedAmerica, Inc., who worked in California at any time during
14 the Class Period." The Class Period is April 15, 2019 to October 15, 2021.

15 6. The Court concludes that, for settlement purposes only, the Class meets the
16 requirements for certification under section 382 of the California Code of Civil Procedure in that:
17 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
18 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
19 community of interest amongst the members of the Class with respect to the subject matter of the
20 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
21 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
22 action is superior to other available methods for the efficient resolution of this controversy; and (f)
23 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
24 representative of the Class.

25 7. The Court provisionally appoints Plaintiff as the representative of the Class. The
26 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
27 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

1 8. The Court hereby approves, as to form and content, the Notice of Proposed
2 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
3 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
4 accurately inform the Class of all material elements of the proposed Settlement, of the Class
5 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
6 member’s right and opportunity to object to the Settlement. The Court further finds that the
7 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
8 and this Order meets the requirements of due process, is the best notice practicable under the
9 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
10 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
11 the Agreement.

12 9. The Court hereby appoints ILYM Group as Settlement Administrator. No later
13 than thirty (30) calendar days after preliminary approval of the Settlement by the Court, Defendant
14 shall provide to the Settlement Administrator an electronic spreadsheet with the Class Data. The
15 Settlement Administrator will perform address updates and verifications as necessary prior to the
16 mailing of the Class Notice. Using best efforts to mail it as soon as possible, and in no event later
17 than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class
18 Notice to all Class Members via first-class U.S. Mail.

19 10. The Court hereby preliminarily approves the proposed procedure for exclusion
20 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
21 from the Class as provided in the Class Notice by following the instructions for requesting
22 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
23 postmarked by no later than forty-five (45) calendar days after the date of the mailing of the Class
24 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
25 response date for requests for exclusion will be extended an additional 15 days. Any such person
26 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
27 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
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comment thereon. Class Members who have not requested exclusion shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for exclusion may only opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass of individuals is not permitted and will be deemed invalid. Subject to the Court's final approval of the Settlement, those Aggrieved Employees that worked during the PAGA Period of April 15, 2019 to October 15, 2021, will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims in the Agreement regardless of their request for exclusion from the Class (i.e., subject to the Court's final approval of the Settlement, the Judgment on this Settlement will have res judicata effect as to the Released PAGA Claims for all Aggrieved Employees, regardless of whether they opt-out of the Settlement).

11. Any Class Member who has not opted out may appear at the final approval hearing and may object or express the Member's views regarding the Settlement, and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice. Class Members will have forty-five (45) calendar days from the date of the mailing of the Class Notices to submit their written objections to the Settlement Administrator in accordance with the instructions in the Class Notice. If the Class Notice Packet is re-mailed, the response date for written objections will be extended an additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to make oral objections.

12. A Final Approval Hearing shall be held before this Court on _____ at _____ in Department 68 at the San Diego County Superior Court to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether the Final Approval Order and Judgment should be entered herein; whether the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys' fees and costs, the service awards, and the expenses of the Settlement

1 Administrator. All papers in support of the motion for final approval and the motion for attorneys'
2 fees, costs and service awards, both motions to be heard at the Final Approval Hearing, shall be
3 filed with the Court and served on all counsel no later than sixteen (16) court days before the
4 hearing.

5 13. Neither the Settlement nor any exhibit, document, or instrument delivered
6 thereunder shall be construed as a concession or admission by Defendant in any way that the
7 claims asserted have any merit or that this Action was properly brought as a class or representative
8 action, and shall not be used as evidence of, or used against Defendant as, an admission or
9 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
10 omission by Defendant or with respect to the truth of any allegation asserted by any person.
11 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
12 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
13 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
14 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
15 evidence of a presumption, concession, indication or admission by Defendant of any liability,
16 fault, wrongdoing, omission, concession or damage.

17 14. In the event the Settlement does not become effective in accordance with the terms
18 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
19 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
20 and the Parties shall revert to their respective positions as of before entering into the Agreement,
21 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
22 including all available defenses and affirmative defenses, and arguments that any claim in the
23 Action could not be certified as a class action and/or managed as a representative action. In such
24 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
25 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
26 the Agreement with respect to the effect of the Agreement if it is not approved.

1 15. The Court reserves the right to adjourn or continue the date of the final approval
2 hearing and all dates provided for in the Agreement without further notice to Class Members, and
3 retains jurisdiction to consider all further applications arising out of or connected with the
4 proposed Settlement.

5 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
6 further orders of the Court at the Final Approval Hearing.

7 **IT IS SO ORDERED.**

8
9 Dated: _____

HON. RICHARD S. WHITNEY
JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

KATHRYNE MARTINEZ-LOPEZ, et al.,

Plaintiffs,

v.

MEDAMERICA, INC., a Corporation, and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **37-2020-00034393-CU-OE-CTL**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date:
Hearing Time:

Judge: Hon. Richard S. Whitney
Dept.: 68

Action Filed: September 28, 2020
Trial Date: None Set

FINAL APPROVAL ORDER AND JUDGMENT

1 The motion of Plaintiff Kathryne Martinez-Lopez (“Plaintiff”) for an order finally
2 approving the Class Action Settlement Agreement (“Agreement”) with Defendant MedAmerica,
3 Inc. (“Defendant”), attorneys’ fees and costs, service payment, and the fees and expenses of the
4 Settlement Administrator duly came on for hearing on _____ before the Honorable
5 Kenneth S. Whitney.

6
7 **I.**

8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

- 11 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
14 including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of Four Hundred Thousand
17 Dollars (\$400,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 18 4. The Court further finds that the Settlement was the result of arm’s length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
21 Settlement, the significant risks relating to certification, liability, and damages issues, and the
22 assistance of an experienced mediator in the settlement process, among other factors, support the
23 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

- 25 5. On _____, the Court granted preliminary approval of the Settlement. At
26 this same time, the Court approved conditional certification of the Class for settlement purposes
27 only.

28 **FINAL APPROVAL ORDER AND JUDGMENT**

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7. The deadline for opting out of the Class or submitting written objections to the Settlement was _____. There was an adequate interval between notice and the deadline to permit Class Members to choose what to do and act on their decision. A full opportunity has been afforded to the Class Members to participate in this hearing, and all Class Members and other persons wishing to be heard have been heard. Class Members also have had a full and fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the Court determines that all Class Members who did not timely and properly submit a request for exclusion are bound by the Settlement and this Final Approval Order and Judgment.

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a. The settlement was reached through arm's-length bargaining between the parties during an all-day mediation before Steven J. Rottman, Esq., a respected mediator of wage and hour representative and class actions. There has been no collusion between the parties in reaching the proposed settlement.

b. Plaintiff's investigation and discovery have been sufficient to allow the Court and counsel to act intelligently.

c. Counsel for both parties are experienced in similar employment class action litigation. All counsel recommended approval of the Agreement.

d. The percentage of objectors and requests for exclusion is small. _____
objections were received. _____ requests for exclusion were received.

e. The participation rate was high. _____ Class Members will be mailed a settlement payment, representing _____ % of the overall Class.

9. The consideration to be given to the Class Members under the terms of the Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims asserted in this action and is fair, reasonable and adequate compensation for the release of Class Members' claims, given the uncertainties and significant risks of the litigation and the delays which would ensue from continued prosecution of the action.

10. The Agreement is approved as fair, adequate and reasonable and in the best interests of the Class Members.

Attorneys' Fees and Costs

11. An award of \$_____ for attorneys' fees, representing one-third (1/3) of the Gross Settlement Amount, and \$_____ for litigation costs and expenses, is reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class Counsel. The requested awards have been supported by Class Counsel's lodestar and billing statement.

Class Representative Service Payment

12. The Agreement provides for a Class Representative Service Payment of not more than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that Class Representative Service Payment in the amount of \$_____ to the Plaintiff is reasonable in light of the risks and burdens undertaken by the Plaintiff in the litigation, for her time and effort in

FINAL APPROVAL ORDER AND JUDGMENT

1 bringing and prosecuting this matter on behalf of the Class, and for her execution of a general
2 release.

3 **Settlement Administration Expenses**

4 13. The Settlement Administrator shall calculate and administer the payment to be
5 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
6 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Payment,
7 generate and issue any required tax reporting forms, calculate withholdings and perform the other
8 remaining duties set forth in the Agreement. The Settlement Administrator has documented
9 \$_____ in fees and expenses, and this amount is reasonable in light of the work performed by
10 the Settlement Administrator.

11 **PAGA Payment**

12 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
13 Amount of \$25,000, which shall be allocated \$18,750 to the LWDA as the LWDA's 75% share of
14 the settlement of civil penalties paid pursuant to the PAGA and \$6,250 to be distributed to the
15 Aggrieved Employees based on their respective pay periods worked during the PAGA Period.
16 The Aggrieved Employees are all individuals who worked for Defendant in California as non-
17 exempt employees at any time during the PAGA Period, which is April 15, 2019 to October 15,
18 2021. The Court finds this PAGA Payment to be reasonable. All Aggrieved Employees will be
19 sent their share of the PAGA Payment and will be subject to the release of the Released PAGA
20 Claims as set forth below, whether or not they opt out of the Settlement (i.e., the Judgment on this
21 Settlement will have res judicata effect as to the Released PAGA Claims in the Settlement
22 Agreement for all Aggrieved Employees and the LWDA regardless of whether they opt-out of the
23 Settlement).

24
25 **II.**

26 **ORDERS**

27 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

28 **FINAL APPROVAL ORDER AND JUDGMENT**

1 1. The certification of the Class for the purposes of settlement is confirmed. The
2 Class is defined as follows:

3 All current and former non-exempt employees employed by MedAmerica, Inc.,
4 who worked in California at any time during the Class Period (April 15, 2019 to
5 October 15, 2021).

6 2. All persons who meet the foregoing definition are members of the Class or Class
7 Members, except for those individuals who filed a valid request for exclusion (“opt out”) from the
8 Class. [INSERT REFERENCE TO IDENTIFY ANY OPT OUTS].

9 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
10 best interest of the Class.

11 4. Class Counsel are awarded attorneys' fees in the amount of \$_____ and
12 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
13 compensation or reimbursement from Defendant, Plaintiff or members of the Class.

14 5. The payment of the Class Representative Service Payment in the amount of \$
15 _____ to the Plaintiff is approved.

16 6. The payment of \$_____ to the Settlement Administrator for their fees and
17 expenses is approved.

18 7. The PAGA Payment of \$25,000 is approved and shall be allocated in accordance
19 with the Agreement.

20 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
21 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
22 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
23 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
24 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
25 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
26 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
27 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
28 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding

FINAL APPROVAL ORDER AND JUDGMENT

1 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
2 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
3 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
4 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
5 Released PAGA Claims.

6 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
7 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
8 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
9 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
10 to individual Class Members.

11 10. If the Agreement does not become final and effective in accordance with the terms
12 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
13 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
14 revert to their respective positions as of before entering into the Agreement, and expressly reserve
15 their respective rights regarding the prosecution and defense of this Action, including all available
16 defenses and affirmative defenses, and arguments that any claim in the Action could not be
17 certified as a class action and/or managed as a representative action.

18
19 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

20 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
21 Plaintiff, and all members of the Class, shall take nothing in the Action.

22 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
23 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
24 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
25 arising from or in connection with the distribution of settlement benefits.

26 3. The Parties are authorized, without further approval from the Court, to agree to and
27 to adopt such amendments, modifications and expansions of the Agreement and all exhibits

28

FINAL APPROVAL ORDER AND JUDGMENT

1 attached thereto which are consistent with this Final Approval Order and Judgment and as
2 approved by the Court.

3 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
4 provided in the Agreement and in this Final Approval Order and Judgment.

5 5. As of the Effective Date, each Class Member who has not validly opted out has
6 released the "Released Class Claims" against the Defendant and the Released Parties as set forth
7 in the Agreement. "Released Class Claims" means all claims as pled in the First Amended
8 Complaint which will include class claims based on the facts of the operative Complaint
9 including claims for (1) failure to provide meal periods or pay premium wages for missed, denied
10 or unauthorized meal periods; (2) failure to provide rest breaks, or pay premium wages for missed,
11 denied or unauthorized rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum
12 wages, including the prevailing minimum wage, off-the-clock claims, and payment for all hours
13 worked; (5) failure to timely pay wages during employment; (6) failure to pay all wages due to
14 discharged and quitting employees; (7) failure to maintain required records, including failure to
15 keep accurate and complete payroll records; (8) failure to furnish accurate itemized wage
16 statements or provide fully and accurately itemized wage statements; (9) failure to indemnify
17 employees for necessary expenditures incurred in discharge of duties; (10) California Civil Code
18 section 558 penalties and civil penalties pursuant to PAGA; and (11) unfair and unlawful business
19 practices, as well as any known or unknown wage and hour claims that were asserted or could
20 have been asserted based on the factual allegations contained in the operative Complaint as
21 amended. This includes claims for unpaid wages, meal periods and rest breaks and related
22 penalties, expense reimbursements, waiting time penalties, payroll stub violations and claims for
23 civil penalties under Labor Code section 2698 et seq., Labor Code sections 201-204 et seq., 210,
24 226, 226.3, 226.7, 232, 232.5, 351, 432.5, 510, 511, 512, 515, 558, 558.1, 1174, 1174.5, 1194,
25 1197, 1197.1, 1197.5(k), 1198, 1199, 2699.3, 2802, IWC Wage Orders 4-2001 and 7(A)(3), and
26 any other applicable wage orders, California Code of Regulations, Title 8, Section 11040,
27 Subdivision 5(A)-(B) and Title 8, Section 1 1070(14), Business and Professions Code section
28

FINAL APPROVAL ORDER AND JUDGMENT

1 17200 et seq., and claims or potential claims for attorneys' fees and costs (i.e., the Judgment on
2 this Settlement will have res judicata effect as to the Released Class Claims for all Class Members
3 who have not validly opted out per the Agreement).

4 6. As of the Effective Date, Defendant and the other Released Parties shall receive a
5 release from the Aggrieved Employees of the Released PAGA Claims as set forth in the
6 Agreement. The "Released PAGA Claims" are any and all PAGA claims for civil penalties
7 premised upon the facts and allegations in the Complaint or First Amended Complaint as well as
8 any and all claims for civil penalties that were asserted or could have been asserted based on the
9 factual allegations contained in the Complaint, First Amended Complaint, or any amended
10 complaints which arose during the PAGA Period. . As of the Effective Date, this Judgment also
11 adjudicates and releases the claims and/or rights of the LWDA to recover civil penalties against
12 the Released Parties on behalf of the Aggrieved Employee for any of the Released PAGA Claims
13 (i.e., the Judgment on this Settlement will have res judicata effect as to those Released PAGA
14 Claims of the LWDA, whether pursued directly by the LWDA or by a representative pursuant to
15 PAGA). The release of the Released PAGA Claims shall be effective as to all Aggrieved
16 Employees and the LWDA, regardless of whether an Aggrieved Employee submitted an Election
17 Not to Participate in Settlement (i.e., the Judgment on this Settlement will have res judicata effect
18 as to the Released PAGA Claims for all Aggrieved Employees and the LWDA, regardless of
19 whether they opt-out of the Settlement).

20
21 7. As of the Effective Date, Plaintiff generally, releases and discharges Defendant and
22 the Released Parties from all of the Plaintiff's Released Claims as set forth fully in the Agreement.

23 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

24
25 Dated: _____

26 _____
27 HON. RICHARD S. WHITNEY
JUDGE, SUPERIOR COURT OF CALIFORNIA

28

FINAL APPROVAL ORDER AND JUDGMENT

EXHIBIT D

[FIRST AMENDED COMPLAINT]

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KATHRYNE MARTINEZ-LOPEZ,
an individual, on behalf of herself and
on behalf of all persons similarly
situated,

Plaintiff,

vs.

MEDAMERICA, INC. a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2020-00034393-CU-OE-CTL

**FIRST AMENDED CLASS ACTION COMPLAINT
FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL.
BUS. & PROF. CODE §§ 17200, *et seq.*;

2. FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 &
1197.1;

3. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;

4. FAILURE TO PROVIDE REQUIRED MEAL
PERIODS IN VIOLATION OF CAL. LAB. CODE §§
226.7 & 512 AND THE APPLICABLE IWC WAGE
ORDER;

5. FAILURE TO PROVIDE REQUIRED REST PERIODS
IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512
AND THE APPLICABLE IWC WAGE ORDER;

6. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 2802;

7. FAILURE TO PROVIDE ACCURATE ITEMIZED
STATEMENTS IN VIOLATION OF CAL. LAB. CODE §
226; and,

8. FAILURE TO PROVIDE WAGES WHEN DUE IN
VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND
203;

9. FAILURE TO PROVIDE PERSONNEL FILES IN
VIOLATION OF CAL. LAB. CODE § 1198.5.

10. CIVIL PENALTIES FOR VIOLATIONS OF THE
LABOR CODE PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT, CAL. LAB. CODE §§
2699 *ET SEQ.*

DEMAND FOR A JURY TRIAL

1 Plaintiff Kathyne Martinez-Lopez (“PLAINTIFF”) and individual, on behalf of herself and all
2 other similarly situated current and former employees, alleges on information and belief, except for her
3 own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Medamerica, Inc. (“DEFENDANT”) is a Limited Liability Company that at
7 all relevant times mentioned herein conducted and continues to conduct substantial business in the state
8 of California.

9 2. DEFENDANT provides a wide range of integrated acute care expertise.

10 3. PLAINTIFF was employed by DEFENDANT in California from March of 2019 to
11 March of 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
12 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and
13 overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined
15 as all individuals who are or previously were employed by DEFENDANT in California and classified
16 as non-exempt employees (the “CLASS”) at any time during the period beginning April 15, 2019
17 through to October 15, 2021 (the “CLASS PERIOD”). The amount in controversy for the aggregate
18 claim of CLASS Members is under five million dollars (\$5,000,000.00).

19 5. PLAINTIFF brings this Class Action on behalf of herself and a CLASS in order to fully
20 compensate the CLASS for their losses incurred during the CLASS PERIOD caused by
21 DEFENDANT’s uniform policy and practice which failed to lawfully compensate these employees.
22 DEFENDANT’s uniform policy and practice alleged herein was an unlawful, unfair and deceptive
23 business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and
24 the other members of the CLASS. PLAINTIFF and the other members of the CLASS seek an
25 injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
26 the other members of the CLASS who have been economically injured by DEFENDANT’s past and
27 current unlawful conduct, and all other appropriate legal and equitable relief.

28 6. The true names and capacities, whether individual, corporate, subsidiary, partnership,

1 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
2 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
3 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
4 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
5 believe, and based upon that information and belief alleges, that the Defendants named in this
6 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more
7 of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

8 7. The agents, servants and/or employees of the Defendants and each of them acting on
9 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
10 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein
11 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each
12 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally
13 liable to PLAINTIFF and the other members of the CLASS, for the loss sustained as a proximate result
14 of the conduct of the Defendants' agents, servants and/or employees.

15 16 **THE CONDUCT**

17 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
18 required to pay PLAINTIFF and CLASS Members for all their time worked, meaning the time during
19 which an employee is subject to the control of an employer, including all the time the employee is
20 suffered or permitted to work. DEFENDANT required PLAINTIFF and CLASS Members to work
21 without paying them for all the time they were under DEFENDANT's control. Specifically,
22 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-duty
23 meal break. PLAINTIFF was from time to time interrupted by work assignments while what should
24 have been PLAINTIFF's off-duty meal break. Indeed there were days where PLAINTIFF did not even
25 receive a partial lunch. Furthermore, PLAINTIFF was from time to time contacted after-hours on her
26 personal cell phone and was expected to reply to all issues related to her employment. As a result,
27 PLAINTIFF and other CLASS Members forfeited minimum wage and overtime compensation by
28 working without their time being accurately recorded and without compensation at the applicable

1 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
2 PLAINTIFF and other CLASS Members for all time worked is evidenced by DEFENDANT's business
3 records.

4 9. As a result of their rigorous work schedules, PLAINTIFF and other CLASS Members
5 were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully
6 relieved of duty for their meal periods. PLAINTIFF and other CLASS Members were required to
7 perform work from time to time as ordered by DEFENDANT for more than five (5) hours during some
8 shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide
9 PLAINTIFF and CLASS Members with a second off-duty meal period for some workdays in which
10 these employees are required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
11 members of the CLASS therefore forfeited meal breaks without additional compensation and in
12 accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT failed to maintain
13 adequate staffing levels while increasing the production levels for each employee.

14 10. During the CLASS PERIOD, PLAINTIFF and other CLASS Members were also
15 required from time to time to work in excess of four (4) hours without being provided ten (10) minute
16 rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes
17 for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest
18 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from
19 time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked
20 of ten (10) hours or more from time to time. PLAINTIFF and other CLASS Members were also not
21 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
22 and other CLASS Members were from time to time denied their proper rest periods by DEFENDANT
23 and DEFENDANT's managers.

24 11. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally,
25 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other CLASS
26 Members for required business expenses incurred by the PLAINTIFF and other CLASS Members in
27 direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor
28 Code Section 2802, employers are required to indemnify employees for all expenses incurred in the

1 course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
2 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
3 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
5 them to be unlawful."

6 12. In the course of their employment PLAINTIFF and other CLASS Members as a business
7 expense, were required by DEFENDANT to use their own personal cellular phones as a result of and
8 in furtherance of their job duties as employees for DEFENDANT but were not reimbursed or
9 indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones for
10 DEFENDANT's benefit. As a result, in the course of their employment with DEFENDANT,
11 PLAINTIFF and other members of the CLASS incurred unreimbursed business expenses which
12 included, but were not limited to, costs related to the use of their personal cellular phones and travel
13 with their personal vehicles, on behalf of and for the benefit of DEFENDANT.

14 13. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
15 members of the CLASS with complete and accurate wage statements which failed to show, among
16 other things, the correct net and gross wages earned. Cal. Lab. Code § 226 provides that every
17 employer shall furnish each of his or her employees with an accurate itemized wage statement in writing
18 showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay
19 period and the corresponding amount of time worked at each hourly rate. Aside, from the violations
20 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement
21 that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
22 time to time provided PLAINTIFF and the other members of the CLASS with wage statements which
23 violated Cal. Lab. Code § 226.

24 14. In violation of the applicable sections of the California Labor Code and the requirements
25 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
26 policy, practice and procedure, intentionally, knowingly and systematically failed to compensate
27 PLAINTIFF and the other members of the CLASS for missed meal and rest periods and all wages due
28 to them. This uniform policy and practice of DEFENDANT was intended to purposefully avoid the

1 payment for all time worked as required by California law which allows DEFENDANT to illegally
2 profit and gain an unfair advantage over competitors who complied with the law. To the extent
3 equitable tolling operates to toll claims by the CLASS against DEFENDANT, the CLASS PERIOD
4 should be adjusted accordingly.

5 15. By reason of this uniform conduct applicable to PLAINTIFF and all CLASS Members,
6 DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition
7 Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by engaging in a company-wide policy and
8 procedure which failed to accurately calculate and record all missed meal and rest periods and all wages
9 due to PLAINTIFF and other CLASS Members. The proper recording of these employees’ missed
10 meal and rest breakwages and all other wages due to them is the DEFENDANT’s burden. As a result
11 of DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT failed
12 to properly calculate and/or pay all required compensation for work performed by the members of the
13 CLASS and violated the California Labor Code and regulations promulgated thereunder as herein
14 alleged.

15 16. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required
16 off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor Code and
17 failed to pay her all minimum and overtime wages due to her. DEFENDANT did not have a policy or
18 practice which provides timely off-duty meal and rest breaks to PLAINTIFF and also failed to
19 compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work performed by
20 the PLAINTIFF did not prevent her from being relieved of all of her duties for the legally required off-
21 duty meal periods. As a result, DEFENDANT’s failure to provide PLAINTIFF with the legally required
22 meal periods is evidenced by DEFENDANT’s business records. To date, DEFENDANT has yet to pay
23 PLAINTIFF all of her wages due to her and DEFENDANT has failed to pay any penalties owed to her
24 under California Labor Code Section 203. The amount in controversy for PLAINTIFF individually does
25 not exceed the sum or value of \$75,000.

26
27 **JURISDICTION AND VENUE**

28 17. This Court has jurisdiction over this Action pursuant to California Code of Civil

1 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action
2 is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
3 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

4 18. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
5 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides in this County,
6 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in
7 this County and/or conducts substantial business in this County, and (ii) committed the wrongful
8 conduct herein alleged in this County against members of the CLASS.

9
10 **THE CLASS**

11 19. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive
12 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
13 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a CLASS, defined as all individuals who are
14 or previously were employed by DEFENDANT in California and classified as non-exempt employees
15 (the "CLASS") at any time during the period beginning four (4) years prior to the filing of this
16 Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount
17 in controversy for the aggregate claim of CLASS Members is under five million dollars
18 (\$5,000,000.00).

19 20. To the extent equitable tolling operates to toll claims by the CLASS against
20 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

21 21. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
22 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and
23 the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice
24 whereby DEFENDANT systematically failed to record all meal and rest breaks missed by PLAINTIFF
25 and other CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required
26 employees to perform this work and permits or suffers to permit this work.

27 22. DEFENDANT has the legal burden to establish that each and every CLASS Member
28 was paid accurately for all meal and rest breaks missed as required by California laws. The

1 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in
2 place during the CLASS PERIOD and still fails to have in place a policy or practice to ensure that each
3 and every CLASS Member is paid as required by law. This common business practice is applicable
4 to each and every CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or
5 deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation,
6 damages, and reliance are not elements of this claim.

7 23. The CLASS, is so numerous that joinder of all CLASS Members is impracticable.

8 24. DEFENDANT uniformly violated the rights of the CLASS under California law by:

- 9 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
10 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
11 in place company policies, practices and procedures that uniformly and
12 systematically failed to record and pay PLAINTIFF and the other members of
13 the CLASS for all time worked, including minimum wages owed and overtime
14 wages owed for work performed by these employees;
- 15 (b) Committing an act of unfair competition in violation of the UCL, by failing to
16 provide the PLAINTIFF and the other members of the CLASS with the legally
17 required meal and rest periods; and,
- 18 (c) Committing an act of unfair competition in violation of the California Unfair
19 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
20 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CLASS members
21 with necessary expenses incurred in the discharge of their job duties.
- 22 (d) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
23 PLAINTIFF and the members of the CLASS all wages due for overtime worked,
24 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 25 (e) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
26 accurately pay PLAINTIFF and the members of the CLASS the correct
27 minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab.
28 Code §§ 1194 and 1197;

- 1 (f) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CLASS with an accurate itemized statement in writing showing
3 the corresponding correct amount of wages earned by the employee;
- 4 (g) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
5 and the other members of the CLASS with all legally required off-duty,
6 uninterrupted thirty (30) minute meal breaks and the legally required off-duty
7 rest breaks;
- 8 (h) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
9 CLASS members with necessary expenses incurred in the discharge of their job
10 duties; and,
- 11 (i) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
12 employee is discharged or quits from employment, the employer must pay the
13 employee all wages due without abatement, by failing to tender full payment
14 and/or restitution of wages owed or in the manner required by California law to
15 the members of the CLASS who have terminated their employment.

16
17 25. This Class Action meets the statutory prerequisites for the maintenance of a Class
18 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 19 (a) The persons who comprise the CLASS are so numerous that the joinder of all
20 such persons is impracticable and the disposition of their claims as a class will
21 benefit the parties and the Court;
- 22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
23 are raised in this Complaint are common to the CLASS will apply uniformly to
24 every member of the CLASS;
- 25 (c) The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CLASS. PLAINTIFF, like all the other members of the CLASS,
27 was classified as non-exempt employees paid on an hourly basis who was
28 subjected to the DEFENDANT's deceptive practice and policy described herein.

1 PLAINTIFF sustained economic injury as a result of DEFENDANT's
2 employment practices. PLAINTIFF and the members of the CLASS were and
3 are similarly or identically harmed by the same unlawful, deceptive, unfair and
4 pervasive pattern of misconduct engaged in by DEFENDANT; and,

- 5 (d) The representative PLAINTIFF will fairly and adequately represent and protect
6 the interest of the CLASS, and has retained counsel who are competent and
7 experienced in Class Action litigation. There are no material conflicts between
8 the claims of the representative PLAINTIFF and the members of the CLASS
9 that would make class certification inappropriate. Counsel for the CLASS will
10 vigorously assert the claims of all CLASS Members.

11 26. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
12 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 13 (a) Without class certification and determination of declaratory, injunctive, statutory
14 and other legal questions within the class format, prosecution of separate actions
15 by individual members of the CLASS will create the risk of:

- 16 1) Inconsistent or varying adjudications with respect to individual members
17 of the CLASS which would establish incompatible standards of conduct
18 for the parties opposing the CLASS; and/or,
19 2) Adjudication with respect to individual members of the CLASS which
20 would as a practical matter be dispositive of interests of the other
21 members not party to the adjudication or substantially impair or impede
22 their ability to protect their interests.

- 23 (b) The parties opposing the CLASS have acted or refused to act on grounds
24 generally applicable to the CLASS, making appropriate class-wide relief with
25 respect to the CLASS as a whole in that DEFENDANT uniformly failed to pay
26 all wages due to members of the CLASS as required by law;

- 27 1) With respect to the First Cause of Action, the final relief on behalf of the
28 CLASS sought does not relate exclusively to restitution because through

1 this claim PLAINTIFF seeks declaratory relief holding that the
2 DEFENDANT's policy and practices constitute unfair competition,
3 along with declaratory relief, injunctive relief, and incidental equitable
4 relief as may be necessary to prevent and remedy the conduct declared
5 to constitute unfair competition;

6 (c) Common questions of law and fact exist as to the members of the CLASS, with
7 respect to the practices and violations of California law as listed above, and
8 predominate over any question affecting only individual CLASS Members, and
9 a Class Action is superior to other available methods for the fair and efficient
10 adjudication of the controversy, including consideration of:

11 1) The interests of the members of the CLASS in individually controlling
12 the prosecution or defense of separate actions in that the substantial
13 expense of individual actions will be avoided to recover the relatively
14 small amount of economic losses sustained by the individual CLASS
15 Members when compared to the substantial expense and burden of
16 individual prosecution of this litigation;

17 2) Class certification will obviate the need for unduly duplicative litigation
18 that would create the risk of:

19 A. Inconsistent or varying adjudications with respect to individual
20 members of the CLASS, which would establish incompatible
21 standards of conduct for the DEFENDANT; and/or,

22 B. Adjudications with respect to individual members of the CLASS
23 would as a practical matter be dispositive of the interests of the
24 other members not parties to the adjudication or substantially
25 impair or impede their ability to protect their interests;

26 3) In the context of wage litigation because a substantial number of
27 individual CLASS Members will avoid asserting their legal rights out of
28 fear of retaliation by DEFENDANT, which may adversely affect an

individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

27. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CLASS predominate over any question affecting only individual CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CLASS because in the context of employment litigation a substantial number of individual CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CLASS are so numerous that it is impractical to bring all members of the CLASS before the Court;
- (d) PLAINTIFF, and the other CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CLASS;
- (f) There is a community of interest in ensuring that the combined assets of

1 DEFENDANT are sufficient to adequately compensate the members of the
2 CLASS for the injuries sustained;

3 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
4 CLASS, thereby making final class-wide relief appropriate with respect to the
5 CLASS as a whole;

6 (h) The members of the CLASS are readily ascertainable from the business records
7 of DEFENDANT; and,

8 (i) Class treatment provides manageable judicial treatment calculated to bring a
9 efficient and rapid conclusion to all litigation of all wage and hour related claims
10 arising out of the conduct of DEFENDANT as to the members of the CLASS.

11 28. DEFENDANT maintains records from which the Court can ascertain and identify by job
12 title each of DEFENDANT's employees who as have been systematically, intentionally and uniformly
13 subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF
14 will seek leave to amend the Complaint to include any additional job titles of similarly situated
15 employees when they have been identified.

16
17 29. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
18 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and
19 the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice
20 whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF
21 and the other members of the CLASS and reporting time wages owed to these employees, even though
22 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted
23 or suffered to permit this work. DEFENDANT has uniformly denied these CLASS Members wages
24 to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit.
25 To the extent equitable tolling operates to toll claims by the CLASS against DEFENDANT, the CLASS
26 PERIOD should be adjusted accordingly.

27 30. DEFENDANT maintains records from which the Court can ascertain and identify by
28 name and job title, each of DEFENDANT's employees who have been systematically, intentionally and

1 uniformly subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
2 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of similarly
3 situated employees when they have been identified.

4 31. The CLASS is so numerous that joinder of all CLASS Members is impracticable.

5 32. Common questions of law and fact exist as to members of the CLASS, including, but
6 not limited, to the following:

- 7 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
8 compensation due to members of the CLASS for missed meal and rest breaks
9 in violation of the California Labor Code and California regulations and the
10 applicable California Wage Order;
11 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
12 members of the CLASS with accurate itemized wage statements;
13 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed
14 conduct;
15 (d) The proper measure of damages and penalties owed to the members of the
16 CLASS; and,
17 (e) Whether DEFENDANT's conduct was willful.

18
19 **FIRST CAUSE OF ACTION**

20 **For Unlawful Business Practices**

21 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

22 **(By PLAINTIFF and the CLASS and Against All Defendants)**

23 33. PLAINTIFF, and the other members of the CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 34. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code §
26 17021.

27 35. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
28

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
2 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as
3 follows:

4 Any person who engages, has engaged, or proposes to engage in unfair competition may
5 be enjoined in any court of competent jurisdiction. The court may make such orders or
6 judgments, including the appointment of a receiver, as may be necessary to prevent the
7 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition.

8 Cal. Bus. & Prof. Code § 17203.

9 36. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in
10 a business practice which violates California law, including but not limited to, the applicable Industrial
11 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
12 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue
13 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary
14 to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages
15 wrongfully withheld.

16 37. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in
17 that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
18 substantially injurious to employees, and were without valid justification or utility for which this Court
19 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
20 Professions Code, including restitution of wages wrongfully withheld.

21 38. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
22 in that DEFENDANT's uniform policy and practice failed to provide the legally mandated meal and
23 rest periods, the required amount of compensation for missed meal and rest periods and overtime and
24 minimum wages owed, and failed to reimburse all necessary business expenses incurred, due to a
25 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
26 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
27 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §
28

17203, including restitution of wages wrongfully withheld.

39. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of the CLASS to be underpaid during their employment with DEFENDANT.

40. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide all legally required meal breaks to PLAINTIFF and the other members of the CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

41. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

42. PLAINTIFF further demands on behalf of herself and each member of the CLASS, one (1) hour of pay for each workday in which an off duty paid rest period was not timely provided as required by law.

43. By and through the unlawful and unfair business practices described herein, DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other members of the CLASS, including earned wages for all time worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

44. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

45. PLAINTIFF and the other members of the CLASS are entitled to, and do, seek such

1 relief as may be necessary to restore to them the money and property which DEFENDANT has
2 acquired, or of which PLAINTIFF and the other members of the CLASS have been deprived, by means
3 of the above described unlawful and unfair business practices, including earned but unpaid wages for
4 all time worked.

5 46. PLAINTIFF and the other members of the CLASS are further entitled to, and do, seek
6 a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive
7 relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business
8 practices in the future.

9 47. PLAINTIFF and the other members of the CLASS have no plain, speedy and/or adequate
10 remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the
11 practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair
12 business practices described herein, PLAINTIFF and the other members of the CLASS have suffered
13 and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from
14 continuing to engage in these unlawful and unfair business practices.

15
16 **SECOND CAUSE OF ACTION**

17 **For Failure To Pay Minimum Wages**

18 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

19 **(By PLAINTIFF and the CLASS**

20 **and Against All Defendants)**

21 48. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this
22 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

23
24 49. PLAINTIFF and the other members of the CLASS bring a claim for DEFENDANT's
25 willful and intentional violations of the California Labor Code and the Industrial Welfare Commission
26 requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to
27 PLAINTIFF and CLASS Members.
28

1 50. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
2 policy, an employer must timely pay its employees for all hours worked.

3 51. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
5 minimum so fixed is unlawful.

6 52. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
7 including minimum wage compensation and interest thereon, together with the costs of suit.

8 53. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other
9 members of the CLASS without regard to the correct amount of time they work. As set forth herein,
10 DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment
11 of wages due to PLAINTIFF and the other members of the CLASS.

12 54. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
13 without limitation, applicable to the CLASS as a whole, as a result of implementing a uniform policy
14 and practice that denies accurate compensation to PLAINTIFF and the other members of the CLASS
15 in regards to minimum wage pay.

16 55. In committing these violations of the California Labor Code, DEFENDANT inaccurately
17 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
18 and other members of the CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of
19 all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
20 Commission requirements and other applicable laws and regulations.

21 56. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
22 PLAINTIFF and the other members of the CLASS did not receive the correct minimum wage
23 compensation for their time worked for DEFENDANT.

24 57. During the CLASS PERIOD, PLAINTIFF and the other members of the CLASS were
25 paid less for time worked than they were entitled to, constituting a failure to pay all earned wages.

26 58. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
27 to PLAINTIFF and the other members of the CLASS for the true time they worked, PLAINTIFF and
28

1 the other members of the CLASS have suffered and will continue to suffer an economic injury in
2 amounts which are presently unknown to them and which will be ascertained according to proof at trial.

3 59. DEFENDANT knew or should have known that PLAINTIFF and the other
4 members of the CLASS were under compensated for their time worked. DEFENDANT systematically
5 elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their
6 labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated
7 this systematic scheme by refusing to pay PLAINTIFF and the other members of the CLASS the correct
8 minimum wages for their time worked.

9 60. In performing the acts and practices herein alleged in violation of California labor laws,
10 and refusing to compensate the members of the CLASS for all time worked and provide them with the
11 requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and
12 maliciously toward PLAINTIFF and the other members of the CLASS with a conscious and utter
13 disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving
14 them of their property and legal rights, and otherwise causing them injury in order to increase company
15 profits at the expense of these employees.

16 61. PLAINTIFF and the other members of the CLASS therefore request recovery of all
17 unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory
18 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other
19 applicable statutes. To the extent minimum wage compensation is determined to be owed to the
20 CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor
21 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
22 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CLASS Members.
23 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further,
24 PLAINTIFF and other CLASS Members are entitled to seek and recover statutory costs

25
26 **THIRD CAUSE OF ACTION**

27 **For Failure To Pay Overtime Compensation**

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1 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

2 69. In committing these violations of the California Labor Code, DEFENDANT inaccurately
3 recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other
4 CLASS Members. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages,
5 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
6 requirements and other applicable laws and regulations.

7 70. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
8 PLAINTIFF and the other members of the CLASS did not receive full compensation for overtime
9 worked.

10 71. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
11 from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF
12 and the other members of the CLASS. Further, PLAINTIFF and the other members of the CLASS were
13 not subject to a valid collective bargaining agreement that would preclude the causes of action
14 contained herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of herself and the
15 CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the
16 State of California.

17 72. During the CLASS PERIOD, PLAINTIFF and the other members of the CLASS have
18 been paid less for overtime worked that they are entitled to, constituting a failure to pay all earned
19 wages.

20 73. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of the
21 CLASS overtime wages for the time they worked which was in excess of the maximum hours
22 permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and
23 the other members of the CLASS were required to work, and did in fact work, overtime as to which
24 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business records
25 and witnessed by employees.

26 74. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
27 to PLAINTIFF and the other members of the CLASS for the true amount of time they worked,
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1 PLAINTIFF and the other members of the CLASS have suffered and will continue to suffer an
2 economic injury in amounts which are presently unknown to them and which will be ascertained
3 according to proof at trial.

4 75. DEFENDANT knew or should have known that PLAINTIFF and the other members of
5 the CLASS were under compensated for all overtime worked. DEFENDANT systematically elected,
6 either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a
7 matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this
8 systematic scheme by refusing to pay PLAINTIFF and the other members of the CLASS for overtime
9 worked.

10 76. In performing the acts and practices herein alleged in violation of California labor laws,
11 and refusing to compensate the members of the CLASS for all overtime worked and provide them with
12 the requisite overtime compensation, DEFENDANT acted and continues to act intentionally,
13 oppressively, and maliciously toward PLAINTIFF and the other members of the CLASS with a
14 conscious of and utter disregard for their legal rights, or the consequences to them, and with the
15 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
16 in order to increase company profits at the expense of these employees.

17 77. PLAINTIFF and the other members of the CLASS therefore request recovery of all
18 overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory
19 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other
20 applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed
21 to the CLASS Members who have terminated their employment, DEFENDANT's conduct also violates
22 Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
23 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CLASS
24 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith.
25 Further, PLAINTIFF and other CLASS Members are entitled to seek and recover statutory costs.

26
27 **FOURTH CAUSE OF ACTION**

28 **For Failure to Provide Required Meal Periods**

1 [Cal. Lab. Code §§ 226.7 & 512]

2 (By PLAINTIFF and the CLASS and Against All Defendants)

3 78. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this
4 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

5 79. During the CLASS PERIOD, DEFENDANT from time to time failed to provide all the
6 legally required off-duty meal breaks to PLAINTIFF and the other CLASS Members as required by the
7 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CLASS
8 MEMBERS does not prevent these employees from being relieved of all of their duties for the legally
9 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
10 CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal
11 periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CLASS Members with
12 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
13 business records from time to time. Further, DEFENDANT failed to provide PLAINTIFF and CLASS
14 Members with a second off-duty meal period in some workdays in which these employees were
15 required by DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
16 and other members of the CLASS therefore forfeited meal breaks without additional compensation and
17 in accordance with DEFENDANT's strict corporate policy and practice.

18 80. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC
19 Wage Order by failing to compensate PLAINTIFF and CLASS Members who were not provided a meal
20 period, in accordance with the applicable Wage Order, one additional hour of compensation at each
21 employee's regular rate of pay for each workday that a meal period was not provided.

22 81. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
23 Members have been damaged in an amount according to proof at trial, and seek all wages earned and
24 due, interest, penalties, expenses and costs of suit.

25 **FIFTH CAUSE OF ACTION**

26 **For Failure to Provide Required Rest Periods**

1 [Cal. Lab. Code §§ 226.7 & 512]

2 (By PLAINTIFF and the CLASS and Against All Defendants)

3 82. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this
4 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

5 83. PLAINTIFF and other CLASS Members were from time to time required to work in
6 excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees
7 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
8 (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked
9 of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
10 minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
11 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their
12 rigorous work schedules, PLAINTIFF and other CLASS Members were periodically denied their proper
13 rest periods by DEFENDANT and DEFENDANT's managers.

14 84. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC
15 Wage Order by failing to compensate PLAINTIFF and CLASS Members who were not provided a rest
16 period, in accordance with the applicable Wage Order, one additional hour of compensation at each
17 employee's regular rate of pay for each workday that rest period was not provided.

18 85. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
19 Members have been damaged in an amount according to proof at trial, and seek all wages earned and
20 due, interest, penalties, expenses and costs of suit.

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22 **SIXTH CAUSE OF ACTION**

23 **For Failure to Reimburse Employees for Required Expenses**

24 **[Cal. Lab. Code § 2802]**

25 **(By PLAINTIFF and the CLASS and Against All Defendants)**

26 86. PLAINTIFF and the other CLASS members reallege and incorporate by this reference,
27 as though fully set forth herein, the prior paragraphs of this Complaint.

87. Cal. Lab. Code § 2802 provides, in relevant part, that:

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.

88. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFF and the CLASS members for expenses which include, but are not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. DEFENDANT's uniform policy, practice and procedure is to not reimburse PLAINTIFF and the CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses are necessary to complete their principal job duties. These expenses are necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

89. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by PLAINTIFF and the CLASS members in the discharge of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CLASS and Against All Defendants)

90. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this

1 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

2 91. Cal. Labor Code § 226 provides that an employer must furnish employees with
3 an “accurate itemized” statement in writing showing:

4 (1) gross wages earned,

5 (2) total hours worked by the employee, except for any employee whose compensation is solely
6 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
7 515 or any applicable order of the Industrial Welfare Commission,

8 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
9 on a piece-rate basis,

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

12 (5) net wages earned,

13 (6) the inclusive dates of the period for which the employee is paid,

14 (7) the name of the employee and his or her social security number, except that by January 1,
15 2008, only the last four digits of his or her social security number or an employee identification
16 number other than a social security number may be shown on the itemized statement,

17 (8) the name and address of the legal entity that is the employer, and

18 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
19 hours worked at each hourly rate by the employee.

20 92. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
21 members of the CLASS with complete and accurate wage statements which failed to show, among
22 other things, the correct net and gross wages earned. Cal. Lab. Code § 226 provides that every
23 employer shall furnish each of his or her employees with an accurate itemized wage statement in writing
24 showing, among other things, gross wages earned and all applicable hourly rates in effect during the
25 pay period and the corresponding amount of time worked at each hourly rate. Aside, from the
26 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
27 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
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1 DEFENDANT from time to time provided PLAINTIFF and the other members of the CLASS with
2 wage statements which violated Cal. Lab. Code § 226.

3 93. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226,
4 causing injury and damages to PLAINTIFF and the other members of the CLASS. These damages
5 include, but are not limited to, costs expended calculating the correct wages due the amount of
6 employment taxes which were not properly paid to state and federal tax authorities. These damages are
7 difficult to estimate. Therefore, PLAINTIFF and the other members of the CLASS may elect to recover
8 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred,
9 and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.
10 Code § 226, in an amount according to proof at the time of trial (but in no event more than four
11 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CLASS herein).

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19 **EIGHTH CAUSE OF ACTION**

20 **For Failure to Pay Wages When Due**

21 **[Cal. Lab. Code §§ 201, 202, 203]**

22 **(By PLAINTIFF and the CLASS and Against All Defendants)**

23 94. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by
24 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 95. Cal. Lab. Code § 200 provides that:

26 As used in this article:

27 (a) "Wages" includes all amounts for labor performed by employees of every
28 description, whether the amount is fixed or ascertained by the standard of time, task,

1 piece, Commission basis, or other method of calculation.

2 (b) "Labor" includes labor, work, or service whether rendered or performed under
3 contract, subcontract, partnership, station plan, or other agreement if the labor to be paid
for is performed personally by the person demanding payment.

4 96. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an
5 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

6 97. Cal. Lab. Code § 202 provides, in relevant part, that:

7 If an employee not having a written contract for a definite period quits his or her
8 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
9 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
Notwithstanding any other provision of law, an employee who quits without providing
10 a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the date of
11 payment for purposes of the requirement to provide payment within 72 hours of the
notice of quitting.

12 98. There was no definite term in PLAINTIFF's or any CLASS Members' employment
13 contract.

14 99. Cal. Lab. Code § 203 provides:

15 If an employer willfully fails to pay, without abatement or reduction, in accordance with
16 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
who quits, the wages of the employee shall continue as a penalty from the due date
17 thereof at the same rate until paid or until an action therefor is commenced; but the
wages shall not continue for more than 30 days.

18 100. The employment of PLAINTIFF and many CLASS Members has terminated and
19 DEFENDANT has not tendered payment of wages, to these employees who missed meal and rest
20 breaks, as required by law.

21 101. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members
22 of the CLASS whose employment has terminated, PLAINTIFF demands up to thirty days of pay as
23 penalty for not paying all wages due at time of termination for all employees who terminated
24 employment during the CLASS PERIOD, and demands an accounting and payment of all wages due,
25 plus interest and statutory costs as allowed by law.

26 **NINTH CAUSE OF ACTION**

27 For Failure to Provide Personnel Files

1 [Cal. Lab. Code § 1198.5]

2 (By Plaintiff and Against Defendant]

3 102. PLAINTIFF incorporates by reference the allegations set forth in the previous
4 paragraph of this Complaint as though fully set forth at this point.

5 103. On February 11, 2020, PLAINTIFF's counsel of record, as PLAINTIFF's legal
6 representative caused written requests via certified mail to be delivered to DEFENDANT for
7 PLAINTIFF's personnel and employment records, including but not limited to (1) payroll records,
8 (2) employment contracts; (3) itemized pay stubs, and (4) Plaintiff Salazar's complete employment
9 file.

10 104. Defendant failed to provide and/or make available to PLAINTIFF her personnel
11 records, payroll records, employment contracts, and entire employment file within thirty (30) of all
12 her requests stated above. In fact, as of the filing of this First Amended Complaint, Defendant still
13 has not provided the PLAINTIFF her personnel records, pay stubs, and employment file and
14 DEFENDANT has failed to pay PLAINTIFF the statutory penalty in the amount of \$750.

15 105. DEFENDANT has repeatedly violated Cal. Lab. Code Section 1198.5 by failing to
16 timely respond and provide PLAINTIFF with her employment file. Section 1198.5 states that
17 employees (and former employees) have the right to inspect personnel records maintained by the
18 employer "related to the employee's performance or to any grievance concerning the employee."
19 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
20 requested her employment file via certified mail and DEFENDANT failed to respond timely. As a
21 result, PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with Cal.
22 Lab. Code Section 1198.5, a statutory penalty of \$750, and an award of attorneys' fees and costs for
23 bringing this action.

24
25 **TENTH CAUSE OF ACTION**

26 **For Violation of the Private Attorneys General Act**

27 **[Cal. Lab. Code §§ 2698, *et seq.*]**

1 106. PLAINTIFF realleges and incorporates by this reference, as though fully set
2 forth herein, the prior paragraphs of this Complaint.

3 107. PAGA is a mechanism by which the State of California itself can enforce state
4 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
5 the state's labor law enforcement agencies. An action to recover civil penalties under
6 PAGA is fundamentally a law enforcement action designed to protect the public and not to
7 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
8 but to create a means of "deputizing" citizens as private attorneys general to enforce the
9 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
10 public interest to allow aggrieved employees, acting as private attorneys general to recover
11 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
12 claims cannot be subject to arbitration.

13 108. PLAINTIFF, and such persons that may be added from time to time who
14 satisfy the requirements and exhaust the administrative procedures under the Private
15 Attorney General Act, brings this Representative Action on behalf of the State of California
16 with respect to herself and all individuals who are or previously were employed by
17 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
18 EMPLOYEES") April 15, 2019 through October 15, 2021 (the "PAGA PERIOD").

19 109. On April 15, 2020, PLAINTIFF gave written notice by electronic mail to the
20 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
21 employer of the specific provisions of this code alleged to have been violated as required by
22 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
23 herein. The statutory waiting period for PLAINTIFF to add these allegations to the
24 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
25 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
26 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

27 110. The policies, acts and practices heretofore described were and are an unlawful
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1 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
2 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
3 properly record and provide legally required meal and rest periods, (c) failed to pay
4 minimum wages, (d) failed to pay overtime wages, (e) failed to pay wages when due, and (f)
5 failed to reimburse employees for required expenses, all in violation of the applicable Labor
6 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351,
7 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
8 Title 8, Section 11040, Subdivision 5(A)-(B) and the applicable Wage Order(s), and thereby
9 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery
10 of only civil penalties as prescribed by the Labor Code Private Attorney General Act of
11 2004 as the representative of the State of California for the illegal conduct perpetrated on
12 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

13 1111. All of the conduct and violations alleged herein occurred during the PAGA
14 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
15 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
16 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
17 2018 AJDAR 12157 (Certified for Publication 12/19/18).

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20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
22 as follows:

23 1. On behalf of the CLASS:

24 A) That the Court certify the First Cause of Action asserted by the CLASS as a class action
25 pursuant to Cal. Code of Civ. Proc. § 382;

26 B) An order temporarily, preliminarily and permanently enjoining and restraining

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

- 2 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
3 from compensation due to PLAINTIFF and the other members of the CLASS; and,
4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
5 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and
6 to the other members of the CLASS.

7 2. On behalf of the CLASS:

- 8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
9 Causes of Action asserted by the CLASS as a class action pursuant to Cal. Code of Civ.
10 Proc. § 382;
11 B) Compensatory damages, according to proof at trial, including compensatory damages
12 for minimum and overtime compensation due PLAINTIFF and the other members of
13 the CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory
14 rate;
15 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
16 a violation occurs and one hundred dollars (\$100) per each member of the CLASS for
17 each violation in a subsequent pay period, not exceeding an aggregate penalty of four
18 thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
19 D) The wages of all terminated employees from the CLASS as a penalty from the due date
20 thereof at the same rate until paid or until an action therefore is commenced, in
21 accordance with Cal. Lab. Code § 203;
22 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
23 applicable IWC Wage Order;
24 F) The amount of the expenses PLAINTIFF and each member of the CLASS incurred in
25 the course of their job duties, plus interest, and costs of suit; and,
26 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

27 3. On behalf of the State of California and with respect to all AGGRIEVED
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1 EMPLOYEES:

2 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
3 General Act of 2004.

4 4. On all claims:

5 A) An award of interest, including prejudgment interest at the legal rate;

6 B) Such other and further relief as the Court deems just and equitable; and,

7 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
8 including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

9
10 Dated: September 21, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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12

13 By: _____
14 Norman B. Blumenthal
15 Attorneys for PLAINTIFF
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: September 21, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for PLAINTIFF