

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

This Settlement Agreement and Release of PAGA Claims (“Agreement”) is made by and between Plaintiffs Thomas Felten and Nahuja Bruno (“Plaintiffs”), acting as private attorneys general on behalf of the state of California and Aggrieved Employees, and ProTec Association Services dba ProTec Building Services (“Defendant” or “ProTec”), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2). Plaintiffs and ProTec will at times be referred to collectively as the “Parties” and may individually be referred to as a “party.”

This Agreement shall be binding on Plaintiffs, on the Aggrieved Employees they represent, on the state of California, and on ProTec, subject to the Court’s approval of the Agreement.

I. DEFINITIONS

The following terms shall have the following meanings:

1. “Action” means the lawsuit entitled *Felten v. ProTec Association Services*, Superior Court of California, County of San Diego, Case No. 37-2020-00028816-CU-OE-CTL.

2. “Aggrieved Employees” means all of Defendant’s current and former non-exempt employees in California who worked sometime between April 3, 2019, and Effective Date. The number of Aggrieved Employees, including Plaintiffs, is estimated to be 718.

3. “Complaint” refers to the Consolidated Complaint to be filed by Plaintiffs. Prior to the filing of Plaintiffs’ Motion for Order Approving PAGA Settlement, Plaintiffs and Defendant will file a stipulation seeking leave to file the Consolidated Complaint, in substantially the form attached to this Agreement as Exhibit 2, which shall be the operative Complaint in the Action and with regard to this Settlement.

4. “Court” means the Superior Court of California for the County of San Diego.

5. “Effective Date” means the date when the Court grants approval of this Agreement by signing and filing the Final Order.

6. “Final Order” means the final Court order or judgment entered in this Action, in accordance with the terms of this Agreement, in which the Court adopts and approves this Agreement, and retains jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement.

7. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described in this Agreement.

8. “LWDA” means the California Labor and Workforce Development Agency.

9. “Maximum Settlement Amount” is the non-reversionary sum of \$240,000.00, which represents the total amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiffs’ attorneys’ fees and costs, and payment of settlement-administration costs.

10. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and the Aggrieved Employees after the amounts for the following items, as approved by the Court, are subtracted from the Maximum Settlement Amount: (a) Plaintiffs’ attorneys’ fees up to one third of the Maximum Settlement Amount (not to exceed \$80,000.00); (b) Plaintiffs’ legal costs (not to exceed \$5,000.00); and (c) settlement-administration costs (not to exceed \$6,000.00).

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. “PAGA Period” means the time period from April 3, 2019, through the Effective Date.

13. “PAGA Released Claims” means the PAGA claim for penalties for the time period from April 3, 2019 through the Effective Date for violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 *et seq.*, and 2802 as well as the applicable provisions of the Industrial Wage Orders (through Labor Code § 1198) and for any other PAGA violations that could have been asserted in the action based on the factual assertions and legal assertions in the Complaint.

14. “Pay Period” means any instance when an Aggrieved Employee received a wage statement from April 3, 2019, through the Effective Date, based on ProTec’s data.

15. “Plaintiffs’ Counsel” means the attorneys representing Felten (Law Offices of Jake D. Finkel) and Bruno (David Yeremian & Associates, Inc.).

16. “Settlement” means the Parties’ agreement, as detailed in this Agreement, to dispose of the Action as to Defendant.

17. “Settlement Administrator” means Phoenix Settlement Administrators. The Settlement Administrator shall be responsible for sending notices and for calculating settlement payments specified in the Agreement and preparing all checks and mailings.

II. RECITALS

A. On August 17, 2020, Felten, a former ProTec employee, filed a lawsuit against ProTec in the Superior Court of California, County of San Diego (case number 37-2020-00028816-CU-OE-CTL), alleging a single cause of action seeking penalties under PAGA based on alleged violations of California Labor Code sections 201-203, 226, 226.7, 510, 512, 1174, 1194, and 2802.

B. On November 4, 2020, Bruno, a former ProTec employee, filed a lawsuit against ProTec in the Superior Court of California, County of San Diego (case number 37-2020-00040441-CU-OE-CTL). He later filed an amended complaint to add a cause of action seeking penalties under PAGA based on alleged violations of California Labor Code sections 201-204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1198, 1199, and 2802.

C. On June 8, 2021, by the Parties’ stipulation and the resulting Court order, Bruno’s PAGA claim was consolidated with Felten’s PAGA lawsuit (the consolidated claims are the “Action” defined above).

D. ProTec denies Plaintiffs' allegations and denies liability for the Action.

E. The Parties now desire to settle all claims asserted in the Action.

F. In response to Plaintiffs' requests (akin to discovery requests), ProTec provided Plaintiffs with information and documents pertaining to Plaintiffs and other Aggrieved Employees, including a substantial sampling of Aggrieved Employees' timekeeping and payroll records; Defendant's employee policy manuals; policies and procedures regarding the payment of wages, meal and rest breaks, timekeeping using hand-completed timecards, and electronic timekeeping; information regarding the number of Aggrieved Employees and the number of current versus former employees; the total number of paychecks issued to Aggrieved Employees between April 3, 2019, and November 13, 2019; and sample wage statements. The purpose of providing such information and documents was for Plaintiffs' Counsel to investigate Plaintiffs' allegations, evaluate ProTec's contentions, and value the PAGA Released Claims.

G. On January 5, 2022, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiffs, the state of California, and the Aggrieved Employees.

H. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiffs' PAGA Released Claims, and that it is the Parties' desire and intention to effect a final and complete resolution of the PAGA Released Claims that Plaintiffs, the state of California, and the Aggrieved Employees have against ProTec and any affiliated individuals and entities that could be liable for ProTec's acts or omissions. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant of liability.

I. Based on their own independent investigations and evaluations, the Parties and their respective counsel believe that settlement, for the consideration and on the terms set forth in this Agreement, is fair, reasonable, and adequate and is in the best interests of Plaintiffs, the Aggrieved Employees, and ProTec in light of all known facts and circumstances and the risks inherent in litigation, including potential appellate issues. Further, Plaintiffs' Counsel believe that the settlement amount is in the Aggrieved Employees' best interests and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risks of litigation.

III. COURT APPROVAL; SETTLEMENT AMOUNTS

1. **Cooperation.** The Parties will cooperate in seeking approval of the Settlement described in this Agreement. The Parties further agree to fully cooperate in the drafting and filing of any additional documents reasonably necessary to be prepared or filed, including responding to challenges by any third parties, and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement.

2. **Court Approval.**

a. In accordance with California Labor Code section 2699(1)(2), this Agreement requires review and approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is expressly contingent upon the Court's approval of the Settlement and the material terms and conditions of this Agreement (including, but not limited to,

entry of the Final Order). If Court approval is not given and the Final Order is not entered with the specific material terms requested, this entire Agreement shall automatically be deemed null and void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

b. Plaintiffs will file a Motion for Order Approving PAGA Settlement. As part of the motion, Plaintiffs shall submit a proposed order and judgment that enters judgment in the Action in accordance with this Agreement's terms and provides for the Court's retaining jurisdiction over the Action for the purpose of enforcing the Agreement following approval and entry of a Final Order. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiffs, the state of California, and the Aggrieved Employees (described further below in Section V).

c. If the Court does not grant the request for approval and issue the Final Order, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns. However, under no circumstances may a modified settlement be entered by the Court without a written agreement signed by Plaintiffs and ProTec.

d. At the time that the Motion for Approval of Settlement is filed, Plaintiffs' Counsel will submit a copy of this Agreement to the LWDA, in accordance with Labor Code section 2699(1)(2).

e. Within ten days after entry of the Final Order, Plaintiffs shall submit a copy of the Final Order to the LWDA, in compliance with Labor Code section 2699(1)(3). If Plaintiffs fail to fulfill that obligation, the Settlement shall be voidable at Defendant's option. If Defendant voids the Settlement, all Parties will be returned to their litigation positions as of January 4, 2022.

3. Settlement Amounts.

a. Maximum Settlement Amount. Defendant shall pay \$240,000.00 as the non-reversionary Maximum Settlement Amount in full satisfaction of the PAGA Released Claims. In no case will Defendant be required to pay more than \$240,000.00 to fulfill its obligations under this Agreement or to obtain the Agreement's benefits.

b. Net Settlement Amount. The Parties agree that the following amounts should be subtracted from the Maximum Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and the Aggrieved Employees:

i. *Plaintiffs' Attorneys' Fees and Costs.* ProTec will not oppose Plaintiffs' motion for (i) attorneys' fees in the amount up to one-third of the Maximum Settlement Amount (currently estimated to be \$80,000.00) and (ii) costs incurred in prosecuting this Action, up to \$5,000.00. In the event the Court approves a payment of less than those amounts, the difference will be added to the Net Settlement Amount. Defendant will report payment of the fees and costs with IRS 1099-Misc forms, one issued to each Plaintiff law firm in amounts agreed to by the law firms and conveyed to ProTec. By signing this Agreement, each Plaintiff represents and confirms that his attorneys have reached agreement with the other Plaintiff's attorneys on distribution of the attorneys' fees and costs to be paid in accordance with this subsection. Any modification of Plaintiffs' motion by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the

Parties with the right to terminate the Settlement Agreement, or (iii) impose any obligation on the Defendant to increase the consideration paid in connection with the Settlement. The entitlement of Plaintiffs' Counsel to fees and costs is a material condition of this Settlement, but the amount of fees and costs awarded is not. Plaintiffs can appeal the fee amount awarded by the Court.

ii. *Settlement Administration Costs.* Defendant will not oppose payment of the Settlement Administrator's costs of up to \$6,000.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. Defendant will report this payment on an IRS 1099-Misc form issued to the Settlement Administrator. In the event that the Settlement is not approved, Plaintiffs and Defendant will each pay one-half of the Settlement Administrator's reasonable fees incurred as of that time.

c. Allocation of Net Settlement Amount. The Net Settlement Amount is approximately \$149,000.00 and shall be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699 as follows: 75% of the amount will be paid to the LWDA and 25% will be paid to the Aggrieved Employees. The 25% portion to be paid to the Aggrieved Employees shall be paid to all Aggrieved Employees pro rata based on the number of Pay Periods worked by each Aggrieved Employee during the PAGA Period as follows: The Net Settlement Amount will be divided by the total number of Pay Periods for all Aggrieved Employees during the PAGA Period, yielding the "Pay Period Amount." Each Aggrieved Employee will then be paid an amount equal to the Pay Period Amount multiplied by the Aggrieved Employee's total number of Pay Periods. This amount shall constitute resolution of all remedies available in the Action to Plaintiffs, the state of California, and the Aggrieved Employees and shall preclude pursuit of any PAGA Released Claims, including claims for remedies that Plaintiffs could have included in the Action relating to the alleged facts.

IV. ADMINISTRATION OF SETTLEMENT

1. Information About Aggrieved Employees.

a. Within 14 business days after the Effective Date, ProTec shall provide the Settlement Administrator with information for the Aggrieved Employees. Defendant will in good faith compile from their records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, start date(s) of employment, end date(s) of employment, total Pay Periods worked in the PAGA Period, and Social Security number. The list shall also include the sum total of all Pay Periods worked by Aggrieved Employees during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

b. Within ten business days of receipt of this information, the Settlement Administrator will circulate to counsel for Plaintiffs and Defendant an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate those payments. The Settlement Administrator shall obtain the Parties' approval of the calculations before mailing Individual PAGA Payments. Once the Settlement Administrator has that approval, it will mail the Individual PAGA payments as described below in Section IV(3).

2. Funding of Settlement Amount. Within 30 days after the Effective Date, ProTec will transmit the Maximum Settlement Amount to the Settlement Administrator. This transmittal

wholly satisfies ProTec's obligations with respect to the funding and disbursement of the Settlement. Within ten calendar days of ProTec transmitting the Maximum Settlement Amount to the Settlement Administrator, Plaintiffs shall file a notice of dismissal with prejudice of the entire Action.

3. Payments and Explanatory Letters to Aggrieved Employees. Within five days after receiving the Parties' approval of the calculations of the Individual PAGA Payments, the Settlement Administrator will send the following to each Aggrieved Employee via regular First Class U.S. Mail: (a) the Aggrieved Employee's Individual PAGA Payment and (b) English and Spanish versions of an explanatory letter, which has been mutually approved by the Parties and is attached to this Agreement as Exhibit 1. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed a payment of penalties and will be reported using IRS Form 1099-Misc. Such mailing as described in this section shall be conclusive evidence of payment of the Individual PAGA Payments and shall satisfy any and all due process requirements.

4. Undeliverable Notices.

a. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee.

b. Any checks returned as non-deliverable on or before the check-cashing deadline will be sent promptly via regular First Class U.S. Mail to any available forwarding address. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace or other search using the name, address and/or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing.

c. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining uncashed for more than 180 days after issuance, will escheat to the California State Controller -- California Unclaimed Property Fund in the name of the Aggrieved Employees to whom the checks were issued. If any Aggrieved Employee's check is not cashed within 120 days after mailing, the Settlement Administrator will send to that Aggrieved Employee a letter or postcard informing them that, unless the check is cashed in the next 60 days, it will expire and become non-negotiable. The letter or postcard will also offer to replace the check if it was lost and not cashed.

d. Neither Defendant nor Plaintiffs shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. Payment of Remainder. Within five business days of receiving approval of the payment calculations from the Parties, the Settlement Administrator will distribute the following additional payments: (1) the 75% portion of the Net Settlement Amount to the LWDA; (2) the amounts of attorneys' fees and costs approved by the Court for payment to Plaintiffs' Counsel; and (3) the administration cost approved by the Court for payment to the Settlement Administrator.

6. No Additional Payments by ProTec; Return of Payments. ProTec's monetary obligation under this Agreement is limited to the Maximum Settlement Amount. ProTec shall not be required to pay more than the Maximum Settlement Amount to obtain the relief (including, but not limited to, the Settlement, releases of claims and, issuance of the Final Order) provided in this Agreement or to fully and finally settle and resolve the PAGA Released Claims and the Action. However, in the event that this Agreement is voided or nullified, in whole or in part, however that

may occur, or the Settlement of the Action is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Maximum Settlement Amount to anyone under the terms of this Agreement (except for the Settlement Administrator's reasonable fees incurred if the Settlement is not approved, which fees will be split 50/50 between Plaintiffs and Defendant, as provided in Section III(3)(b)(ii)). If this Agreement is invalidated through any proceeding within the Action, Plaintiffs will return to ProTec any disbursements from the Maximum Settlement Amount under their control or their attorneys' control.

7. **Accounting.** Before any final accounting hearing set by the Court, the Settlement Administrator will provide to the Parties' counsel an accounting under oath of the amounts paid under this Agreement. In the event that the Court does not set such a hearing, the Settlement Administrator will provide the accounting no later than six months after the Individual PAGA Payments have been disbursed.

8. **Tax Consequences; Indemnity.** Neither Plaintiffs nor Defendant, nor their counsel, make any representations or warranties with respect to the tax consequences of any payment under this Agreement. The Individual PAGA Payments are payments of civil penalties under PAGA, shall be reported on an IRS Form 1099-Misc (to the extent required by law), and will not be subject to local, state, and federal tax withholdings when paid. Plaintiffs and each Aggrieved Employee will be responsible for paying all applicable state, local, and federal income taxes on their respective amounts received under this Agreement, and they shall not seek any indemnification from the Released Parties in this regard. Plaintiffs and Plaintiffs' Counsel shall cooperate with Defendant and provide documentation to the extent possible and as reasonably requested to demonstrate any payment of taxes made by Plaintiffs and/or any Aggrieved Employee should any taxing authority challenge the allocation of the allocation of the Maximum Settlement Amount or the Individual PAGA Payments. In the event any taxing authority asserts that the characterization of Plaintiffs' Individual PAGA Payments are inappropriate and/or Plaintiffs fail to pay any tax liability resulting from such payments, and ProTec is made to pay any taxes, settlements, interest, penalties, and/or other sums (collectively, "Tax Payments") to a taxing authority as a result of the payments made to Plaintiffs, Plaintiffs shall fully indemnify and reimburse Defendant for any and all such Tax Payments upon demand and reasonable verification of sums paid.

V. **RELEASES**

1. **Plaintiffs' Releases as PAGA Representatives.** In their capacities as private attorneys general and "aggrieved employees" acting on behalf of themselves, the state of California, and Aggrieved Employees, Plaintiffs release ProTec, as well as all of ProTec's present and former parent, subsidiary, affiliated or related entities, and all of ProTec's current and former employees, officers, directors, partners, shareholders, agents, attorneys, insurers, successors, assigns, and all other related persons, firms, corporations, associations and partnerships ("Released Parties") from any and all of the PAGA Released Claims that arose during the PAGA Period, as well as all claims and causes of action arising under the California Labor Code as alleged in Plaintiffs' Complaint, including, but not limited to, California Labor Code sections 201-204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, and all claims under the California Industrial Welfare Commission Wage Orders as alleged in Plaintiffs' Complaint.

2. **Aggrieved Employees' Release of Claims.** Upon entry of the Final Order, all Aggrieved Employees and the state of California shall be deemed to have fully, finally, and forever released the Released Parties from all claims under PAGA that are pled in Plaintiffs' Complaint and that could have been pled under the PAGA based on the factual allegations in Plaintiffs' Complaint, and that arose during the PAGA Period. To the extent an alleged PAGA violation arises directly from the operative facts pled in Plaintiffs' Complaint and implicates the same primary rights and defenses being settled with this Agreement, claims arising from such violation are settled and released to the fullest extent permitted under applicable law.

VI. LIMITATIONS ON USE OF SETTLEMENT; CONFIDENTIALITY

1. **No Admission of Liability.** Nothing in this Agreement shall be construed to be an admission by Plaintiffs that their claims do not have merit. Nothing in this Agreement shall be construed to be an admission by Defendant of any liability or wrongdoing as to Plaintiffs, Aggrieved Employees, or any other persons; Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Agreement with the intention of avoiding further disputes and litigation. This Agreement and any related court documents and orders are not, and may not be cited or admitted as, evidence of liability.

2. **Non-evidentiary Use.** Except for purposes of effectuating the Settlement pursuant to this Agreement and for Defendant (and/or a Released Party) to establish that an Aggrieved Employee has resolved any of their claims released under this Agreement, and regardless of whether the Final Order occurs, neither this Agreement nor any of its terms (including, but not limited to, the payment of the Maximum Settlement Amount) nor the Settlement itself will be construed as, offered or admitted in evidence as, received as, or deemed to be, evidence in any further proceeding in the Action, or any other civil, criminal, and/or administrative action or proceeding, for any purpose adverse to Defendant or any of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by Defendant or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage.

3. Covenants and Representations by Plaintiffs and Plaintiffs' Counsel.

a. Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity any claim (or portion of a claim or interest in a claim) that is or may be subject to this Agreement.

b. Plaintiffs acknowledge that they have read this Agreement; that they fully understand their rights, privileges, and duties under the Agreement; and that they enter into this Agreement freely and voluntarily. Plaintiffs further acknowledge that they had the opportunity to consult with their attorneys about the terms of this Agreement and the consequences of signing this Agreement.

c. Plaintiffs and Plaintiffs' Counsel jointly and severally represent and warrant to Defendant that there are no attorneys beyond those named as Plaintiffs' Counsel in this Agreement who have claims for fees arising out of the Action or the Settlement described in this Agreement.

4. **Confidentiality.**

a. **Before Filing of Motion for Order Approving Settlement.** This Agreement shall remain confidential in every respect until the Motion for Order Approving Settlement has been filed with the Court. To permit judicial review and approval of the settlement terms, including the Net Settlement Amount and the Individual PAGA Payments, as required by Labor Code section 2698, et seq., this Agreement will be included as an exhibit to the Motion for Order Approving Settlement. In addition, Plaintiffs' Counsel will submit the Agreement to the LWDA when the Motion for Order Approving Settlement is filed, in accordance with Labor Code section 2699(1)(2).

b. **After Filing of Motion for Order Approving Settlement.** Except to the extent necessary to effectuate the Settlement or as required by court or legal process, Plaintiffs and Plaintiffs' Counsel will keep the terms of this Agreement confidential. Neither Plaintiffs nor Plaintiffs' Counsel shall issue a press release, hold a press conference, publish information about the Settlement on any website or through any social media, or otherwise publicize the Settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiffs' Counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel. ProTec may share the details of this Agreement with opposing counsel in any future class actions and PAGA actions, as well as with mediators and their staff, provided any such disclosure is expressly designated as a "Confidential Settlement Communication."

VII. **MISCELLANEOUS PROVISIONS**

1. **Joint Drafters.** Counsel for all Parties have been involved in the drafting and negotiation of this Agreement. Thus, no rule of law that ambiguity in an agreement will be construed against the drafter shall be applied in interpreting this Agreement.

2. **No Waiver.** No waiver by any party of any breach of any term or provision of this Agreement shall be construed to be, nor be, a waiver of any preceding, concurrent or succeeding breach of that term or provision, or any other term or provision, of the Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

3. **Severability.** Should it be determined by a court that any term of this Agreement is unenforceable, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable term.

4. **Applicable Law.** The validity, interpretation, and performance of this Agreement shall be construed and interpreted according to the laws of the state of California. For purposes of jurisdiction and venue, this Agreement is entered into in San Diego County, California, and any litigation arising out of this Agreement, including an action to enforce the Agreement, shall be brought in San Diego County, California.

5. **Binding on Successors.** The Parties agree that this Agreement shall be binding on, and inure to the benefit of, their successors, heirs and/or assigns.

6. **Authority to Sign Agreement.** Any individual signing this Agreement on behalf of another individual, a corporation, or a partnership represents and warrants that she/he has full authority to do so.

7. **Entire Agreement; Modification.** The Parties each acknowledge and represent that no promise or representation not contained in this Agreement has been made to them. They also acknowledge and represent that this Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims. This Agreement cannot be amended or modified except with a writing signed by the Parties.

8. **Court's Continuing Jurisdiction.** The Parties agree that upon the entry of the Final Order, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and the Aggrieved Employees to the fullest extent to interpret, enforce, and effectuate the terms, conditions, intents and obligations of this Agreement.

9. **Authorization to Enter into Settlement; Good-Faith Efforts.** The Parties warrant and represent that they have authorized their attorneys to negotiate the Settlement terms and this Agreement and to take all appropriate action required or permitted to be taken by such Parties to effectuate the Settlement terms. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the Settlement terms, the Parties may seek the Court's assistance to resolve such disagreement.

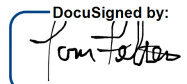
10. **Acknowledgment that Settlement is Fair, Reasonable, and Adequate.** The Parties believe that the Settlement is a fair, adequate, and reasonable settlement of the Action, taking into account all relevant factors, current and potential, and is consistent with public policy and fully complies with applicable provisions of law. The Parties arrived at this Agreement after arms-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness, reasonableness, and adequacy of the Settlement.

11. **Attorneys' Fees in Event of Dispute.** In the event of any lawsuit, arbitration, claim, or similar proceeding relating to this Agreement or the breach of it, the prevailing party shall be entitled to recover reasonable attorneys' fees, reasonable expert fees, and other costs incurred in that lawsuit, arbitration, claim, or similar proceeding, in addition to any other relief to which the party may be entitled. As used in this paragraph, the term "prevailing party" means the party to a lawsuit, arbitration, claim, or other similar proceeding who successfully prosecutes the proceeding or successfully defends against it

12. **Execution in Counterparts.** This Agreement may be executed in counterparts, and, if so executed, shall have the same force and effect it would have if the Parties executed a single original of this Agreement. Each counterpart signature page shall be considered to be an original, and all counterparts together shall constitute one instrument. Execution and delivery of this Agreement by sending a facsimile copy or emailing the signature page in PDF shall constitute a valid and binding execution and delivery of this Agreement by such party. Such facsimile copies or photocopies shall constitute enforceable original documents.

The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

Dated: June 9,
_____, 2022

DocuSigned by:

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Thomas Felten

Dated: June 9,
_____, 2022

DocuSigned by:

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Nahuja Bruno

Dated: _____, 2022

PROTEC ASSOCIATION SERVICES

J. David Rauch
President & Chief Executive Officer

The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

Dated: _____, 2022

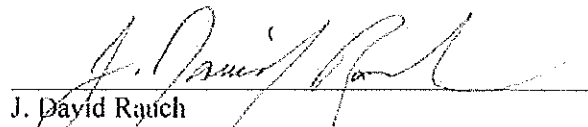
Thomas Felten

Dated: _____, 2022

Nahuja Bruno

Dated: 6-16, 2022

PROTEC ASSOCIATION SERVICES



J. David Rauch
President & Chief Executive Officer

EXHIBIT 1

[DATE]

Dear [NAME]:

The enclosed check is your proportional share of the California Private Attorneys General Act ("PAGA") settlement payment in the case entitled *Felten v. ProTec Association Services* (San Diego County Superior Court Case No. 37-2020-00028816). The lawsuit, which was filed by former employees Thomas Felten and Nahuja Bruno ("Plaintiffs"), alleged that ProTec Association Services dba ProTec Building Services failed to: pay for all time worked; pay all overtime wages; provide appropriate meal and rest breaks; provide accurate itemized wage statements; timely pay final wages upon termination of employment; and reimburse necessary business expenses. The PAGA is a law that allows Plaintiffs to stand in the shoes of the State of California and recover penalties on its behalf and on behalf of those employees aggrieved by ProTec's alleged violations of the California Labor Code ("Aggrieved Employees").

After good-faith negotiations in which both sides recognized the substantial risk of an uncertain outcome, Plaintiffs and ProTec agreed to settle the lawsuit pursuant to the terms and conditions of their Settlement Agreement. The Court has approved the settlement as well as the release of claims described below. While ProTec concedes that its placement of its address on final paystubs as opposed to final paychecks constituted a violation of Labor Code section 226, it believes it has substantial defenses to any other claims that were raised. By settling this case, ProTec is not admitting that it has done anything else wrong.

You are receiving this check because you worked for ProTec Association Services as a non-exempt employee within the State of California at some point between April 3, 2019, and _____ ("PAGA Period"). The settlement includes a full release of claims for civil penalties under the PAGA for (1) violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 et seq., and 2802; and (2) as well as the applicable provisions of the Industrial Wage Orders.

Each individual PAGA payment was calculated on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Period divided by the total number of pay periods worked by all Aggrieved Employees. ProTec's records show that you worked <<PayPeriods>> pay periods during the PAGA Period. The total amount of pay periods worked by all Aggrieved Employees during the PAGA Period is ____.

Enclosed you will also find an IRS Form 1099 for 100% of this payment. ProTec Association Services will report this payment to the IRS through form 1099 and you are responsible for tax payments, if any, that result from this payment. Please cash or deposit the check on or before its printed void date. Checks will not be re-issued after the void date. Checks that are not cashed or negotiated within 180 days of mailing shall be transmitted to the California State Controller – California Unclaimed Property Fund. You will not be retaliated against for cashing the check. It is entirely up to you if you cash your check or not.

If you have any questions about this payment, contact the Settlement Administrator at the address and phone number listed below. Please note that the Settlement Administrator cannot provide tax advice. If you have questions about the tax treatment of this payment, we suggest that you consult your tax advisor or accountant.

Regards,

-----_, Settlement Administrator for *Felten v. ProTec Association Services*

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

EXHIBIT 2

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Attorneys for Plaintiff NAHUJA BRUNO,
on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

THOMAS FELTEN, and NAHUJA BRUNO on
behalf of themselves and all others similarly
situated;

Plaintiffs,

v.

PROTEC ASSOCIATION SERVICES, a
California corporation, doing business as
PROTEC BUILDING SERVICES, and DOES 1
through 50 inclusive,

Defendants.

AND CONSOLIDATED ACTION

Case No.: 37-2020-00028816-CU-OE-CTL

(Consolidated with Case No. 37-2020-40441-CU-
OE-CTL)

*Assigned for all purposes to the Honorable James
A. Mangione in Department C-75*

**CONSOLIDATED COMPLAINT FOR
REPRESENTATIVE ACTION**

1. Violation of the Labor Code Private
Attorneys General Act, Labor Code § 2698 et
seq.

DEMAND FOR JURY TRIAL

1 Plaintiffs THOMAS FELTEN and NAHUJA BRUNO on behalf of themselves and all others
2 similarly situated, complain and allege as follows:

3 I.

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiffs THOMAS FELTEN and NAHUJA
6 BRUNO (hereinafter “Plaintiffs”) and the similarly Aggrieved Employees they seek to represent, as
7 defined herein, as all non-exempt employees employed by or formerly employed by Defendant
8 PROTEC ASSOCIATION SERVICES dba PROTEC BUILDING SERVICES (herein referred to as
9 “Defendant” or “PROTEC”). The Aggrieved Employees consist of all non-exempt employees
10 employed by or formerly employed by Defendant within the state of California who are California
11 citizens at the time of the filing of this Complaint. The term “Liability Period” or “Relevant Time
12 Period” is defined as one (1) year prior to the filing of Plaintiff Felten’s administrative complaint with
13 the Labor and Workforce Development Agency (LWDA) through the present. Plaintiff Felten filed his
14 administrative complaint with the LWDA on April 3, 2020. The Liability Period is from April 3, 2019
15 to the date of judgment. Plaintiffs reserve the right to amend this Complaint to reflect a different
16 “Relevant Time Period” or modify the definition of “Aggrieved Employees” as further discovery is
17 conducted.

18 2. Plaintiffs, each individually, and on behalf the Aggrieved Employees they seek to
19 represent, seek relief against Defendant for violation of the Private Attorneys General Act, Labor Code
20 § 2698 et seq., stemming from Defendant’s (1) failure to pay all wages due, including minimum,
21 regular, and overtime wages as a result of Defendant’s policy of improperly paying its non-exempt
22 hourly employees; (2) failure to provide lawful meal periods; (3) failure to provide lawful rest periods;
23 (4) failure to provide accurate wage statements; (5) failure to pay wages upon ending employment of
24 terminated or resigned employees; and (6) failure to reimburse for all necessary expenditures. Plaintiffs
25 further seek equitable remedies in the form of declaratory relief.

26 3. At all relevant times herein, Defendant has consistently maintained and enforced against
27 Aggrieved Employees the unlawful practices and policies described herein.

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II.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the causes of action alleged in this Complaint because the Court is a court of general subject matter jurisdiction and is not otherwise excluded from exercising subject matter jurisdiction over said causes of action.

5. Venue is proper in this Judicial district and the County of San Diego, because Defendant maintained its location and transacts business in this county, the obligations and liability arise in this county, and work was performed by Plaintiffs and the proposed Aggrieved Employees made the subject of this action in the County of San Diego, California.

6. The California Superior Court has jurisdiction in the matter because the individual claims are under the Seventy-Five Thousand Dollar (\$75,000.00) jurisdictional threshold for Federal Court and upon information and belief Plaintiffs are residents of and/or domiciled in the state of California. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rules of Court, and/or Business and Professions Code.

III.

THE PARTIES

A. The Plaintiffs

7. Plaintiff Felten, at various relevant times herein, was an employee of Defendant and entitled to compensation for all hours worked, minimum and overtime compensation, premium compensation, reimbursement of necessary expenses, and penalties from Defendant. Plaintiff Felten was employed by Defendant as a maintenance technician and welder from on or about November 12, 2013 through September 23, 2019, in the County of San Diego at various times herein relevant. Plaintiff Felten was employed by Defendant during the Liability Period in a non-exempt hourly position.

8. Plaintiff Bruno, at various relevant times herein, was an employee of Defendant and entitled to compensation for all hours worked, minimum and overtime compensation, premium compensation, reimbursement of necessary expenses, and penalties from Defendant. Plaintiff Bruno was employed by Defendant as a technician and welder from on or about December 6, 2018 through

September 2, 2020, sometimes in the County of San Diego, at various times herein relevant. Plaintiff Bruno was employed by Defendant during the Liability Period in a non-exempt hourly position.

9. Each of the Aggrieved Employees are identifiable, current and/or formerly similarly situated persons who were employed in non-exempt hourly positions in California for Defendant during the Liability Period.

B. The Defendants

10. Plaintiffs are informed and believe, and based thereon allege, that PROTEC ASSOCIATION SERVICES dba PROTEC BUILDING SERVICES is a HOA General Contractor founded in 1996 with its principal business office in San Diego, California. PROTEC provides general contracting services across Southern California and Southern Nevada. Defendant is a California Corporation doing business in the state of California and is and/or was the employer of Plaintiffs and Aggrieved Employees during the Liability Period. During the Liability Period, Defendant employed Plaintiffs and Aggrieved Employees and failed to pay Plaintiffs and Aggrieved Employees for all hours worked including minimum wage, overtime premium for overtime hours worked, failed to provide premium compensation, failed to provide accurate itemized wage statements, failed to reimburse for necessary expenditures, and failed to pay due and owing wages upon ending of employment for employees within California. On information and belief and based thereon, Plaintiffs allege that Defendant PROTEC is conducting business in good standing in California.

11. Plaintiffs are ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief allege that said DOE Defendants are legally responsible for (1) failure to pay all wages due, including minimum, regular, and overtime wages as a result of DOE Defendants' policy of improperly paying its non-exempt hourly employees; (2) failure to provide lawful meal periods; (3) failure to provide lawful rest periods; (4) failure to provide accurate wage statements; (5) failure to pay wages upon ending employment of terminated or resigned employees; and (6) failure to reimburse for all necessary expenditures to Plaintiffs and the Aggrieved Employees by virtue of their unlawful practices, and therefore sue these DOE Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

12. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

13. Plaintiffs are informed and believe, and based thereon allege, that each defendant acted in all respects as the agent, servant, partner, joint venturer, alter ego, employee, proxy, managing agent, and/or principal of the co-defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venturer, single enterprise, joint employer employee, alter ego, managing agent, and/or principal with the permission and consent of the co-defendants. Plaintiffs also allege the acts of each Defendant are legally attributable to the other defendants.

14. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants sued herein was, at all relevant times hereto, the employer, owner, shareholder, principal, joint venturer, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter ego of the remaining defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other defendants. The above co-defendants, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized and/or ratified the unlawful acts described herein.

IV.

ADMINISTRATIVE PREREQUISITE

15. Prior to filing this Complaint, On April 3, 2020, Plaintiff Felten gave written notice by electronic filing to the Labor and Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-CM-781703-20) and by certified mail to Defendant PROTEC of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3.

16. A true and correct copy of Plaintiff Felten’s letter sent to the LWDA and to Defendant, dated April 3, 2020, is attached hereto as “**Exhibit A.**” As of the filing of this Complaint, LWDA has not responded.

17. On November 4, 2020, Plaintiff Bruno gave written notice by electronic filing to the LWDA (LWDA Case No. LWDA-CM-811611-20) and by certified mail to Defendant PROTEC of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3.

18. A true and correct copy of Plaintiff Bruno’s letter sent to the LWDA and to Defendant, dated November 4, 2020, is attached hereto as “**Exhibit B.**” As of the filing of this Complaint, LWDA has not responded.

19. “...The statute of limitations on Plaintiffs' PAGA claims is one year. (*See Moreno v. Autozone, Inc.*, No. 05–04432–MJJ, 2007 WL 1650942, at *2) (N.D. Cal. June 5, 2007.)) PAGA itself provides that the statute of limitations is tolled while a plaintiff exhausts his administrative remedies with the LWDA prior to suit, which is required by the statute. See Cal. Labor Code § 2699.3(d). (*Ramirez v. Ghilotti Bros. Inc.*, 941 F.Supp.2d 1197, 1209 (2013).)

20. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving notice to the LWDA and the employer of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice.

21. More than 65 days have passed since Plaintiffs submitted notices to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA has not provided notice to Plaintiffs of its intent to investigate such alleged violations. Plaintiffs further have received no notice of Defendant's intent to cure any of the alleged violations. Therefore, Plaintiffs have satisfied the administrative prerequisites for filing this action.

V.

GENERAL ALLEGATIONS

22. California Labor Code § 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

23. During all or a portion of the Liability Period, Plaintiffs and each Aggrieved Employee was employed by Defendant and each of them, in the state of California. Plaintiffs and each Aggrieved

Employee were non-exempt employees covered under one or more Industrial Welfare Commission (“IWC”) Wage Orders, and Labor Code § 510, and/or other applicable wage orders, regulations and statutes, and each Aggrieved Employee was not subject to an exemption for executive, administrative and professional employees, which imposed obligations on the part of Defendant to pay Plaintiffs and Aggrieved Employees lawful overtime compensation.

24. During the Liability Period, Defendant was obligated to pay Plaintiffs and Aggrieved Employees for all hours worked. Defendant was obligated to pay Plaintiffs and Aggrieved Employees minimum wages and overtime compensation for all hours worked over eight (8) hours of work in one (1) day or forty (40) hours in one (1) week and double-time for hours worked in excess of twelve (12) in one day.

25. Plaintiffs and each Aggrieved Employee primarily performed non-exempt work in excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or statutes, and therefore entitling Plaintiffs and Aggrieved Employees to overtime compensation at time and a half rate, and when applicable, double-time rates as set forth by the applicable Wage Orders, regulations and/or statutes.

26. During the Liability Period, Defendant and each of them, required Plaintiffs and Aggrieved Employees to work under a “Rounding Policy” that is not fair and neutral and resulted, over a period of time, in failure to compensate the employees properly for all the time they have actually worked, in violation of the various applicable Wage Orders, regulations and statutes.

27. Further, Defendant failed to include all remuneration paid to Plaintiffs and Aggrieved Employees when computing hourly non-exempt employees’ regular rate of pay resulting from Defendant’s failure to do a weighted average and include all remuneration paid to hourly non-exempt employees for non-discretionary bonus, shift differential premium, and other types of remuneration, which are not statutory exclusions when calculating hourly non-exempt employees’ regular rate for purposes of overtime payments.

28. Additionally, Defendant required Plaintiffs and Aggrieved Employees to work off the clock without compensation. Defendant required Plaintiffs and Aggrieved Employees to work beyond the scheduled end of their shifts to complete job assignments without compensation for their time worked. Defendant required Plaintiffs and Aggrieved Employees to attend to “emergency calls” which required

1 additional time spent to deal with issues such as flooding. Defendant failed to pay Plaintiffs and similarly
2 aggrieved employees for time worked beyond the scheduled end of their shift attending to “emergency
3 call” job assignments. Further, Defendant’s management manipulated Plaintiffs’ and Aggrieved
4 Employees’ time records in violation of the California Labor Code in an effort to avoid paying lawful
5 wages. Defendant failed to compensate Plaintiffs and Aggrieved Employees for time spent working
6 beyond the end of their shift in violation of the various applicable Wage Orders, regulations and statutes.

7 29. During the Liability Period, Defendant was obligated to provide Plaintiffs and Aggrieved
8 Employees with a timely work-free meal and/or rest period(s). During the Liability Period, Defendant,
9 and each of them, failed and/or refused to schedule Plaintiffs and Aggrieved Employees in an overlapping
10 manner so as to reasonably provide lawful and timely meal and/or rest breaks and/or shift relief for
11 Plaintiffs and Aggrieved Employees, thereby causing the Aggrieved Employees to work without being
12 given paid ten (10) minute rest periods for every four (4) hours or major fraction thereof worked and
13 without being given a timely thirty (30) minute meal period for shifts of at least five (5) hours and a
14 second thirty (30) minute meal period for shifts of at least ten (10) hours during which Aggrieved
15 Employees were relieved of all duties and free to leave the premises. Defendants further failed and/or
16 refused to schedule Plaintiffs and Aggrieved Employees in an overlapping manner and/or provide shift
17 relief for Plaintiffs and Aggrieved Employees so as to reasonably ensure meal and/or rest breaks were
18 taken within the required statutory time frame as required by law. Furthermore, Defendants failed and/or
19 refused to pay any Aggrieved Employees one (1) hour's pay at the employees' regular rate of pay as
20 premium compensation for failure to provide lawful rest and/or meal periods or to providing such rest
21 and/or meal periods within the statutory time frame as a result of their scheduling policy.

22 30. During the Liability Period, Defendant was obligated to indemnify its employees for all
23 necessary expenditures or losses incurred by the employees in direct consequence of the discharge of
24 their duties. Defendant required Plaintiffs and Aggrieved Employees to use their personal vehicles to
25 drive to various work sites in carrying out their job duties. Defendant failed to reimburse employees at
26 the applicable statutory mileage reimbursement rate and instead only compensated Plaintiffs and
27 Aggrieved Employees at a rate of 40 cents per mile, far below the statutory mileage reimbursement rate,
28 which ranged from 57 to 58 cents per mile during the Relevant Time Period. On other occasions,
Defendant provided Plaintiffs and Aggrieved Employees with a gas card but failed to reimburse Plaintiffs

1 and Aggrieved Employees for the wear and tear on their personal vehicles stemming from the use of their
2 personal vehicles in carrying out their job duties. Defendant failed to reimburse Plaintiffs and Aggrieved
3 Employees for the use of their personal vehicles in violation of Labor Code section 2802.

4 31. Defendant: (1) willfully failed and refused, and continues to fail and refuse to pay
5 compensation for all hours worked, including minimum wage, lawful overtime compensation, premium
6 compensation, and reimbursements to Aggrieved Employees; and (2) willfully failed and refused, and
7 continues to fail and refuse, to pay due and owing wages promptly upon termination of employment to
8 Plaintiffs and Aggrieved Employees.

9 32. During the Liability Period, Defendant and each of them, as a result of Defendant's failure
10 to provide Plaintiffs and Aggrieved Employees with all wages earned as described herein, also failed to
11 provide Plaintiffs and Aggrieved Employees with accurate itemized wage statements listing the accurate
12 net and gross wages earned, total hours worked, premium wages earned, and all applicable hourly rates
13 and the corresponding number of hours worked at each hourly rate by the employee.

14 33. Aggrieved Employees who ended their employment during the Liability Period but were
15 not paid the above due compensation for all hours worked and overtime compensation timely upon the
16 termination of their employment as required by Labor Code §§ 201-203 and are entitled to penalties as
17 provided by Labor Code § 203.

18 VI.

19 FIRST CAUSE OF ACTION

20 VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")

21 (LABOR CODE § 2698 ET SEQ.)

22 (Plaintiffs and Aggrieved Employees against Defendant, and Does 1 – 50 inclusive)

23 34. Since, for each Plaintiff, the LWDA has not indicated that it will be investigating and
24 more than 65 days have passed since each Plaintiff's respective letter giving to the LWDA and to
25 Defendant, and because Defendant took no corrective action to remedy the allegations set forth in those
26 letters, Plaintiffs, as representatives of the people of the state of California, will seek any and all penalties
27 otherwise capable of being collected by the Labor Commission, the LWDA and/or the Department of
28 Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Labor Code

section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the provisions discussed herein.

35. Plaintiffs, by virtue of their employment with Defendant, are aggrieved employees with standing to bring an action under the PAGA. Plaintiffs have satisfied all prerequisites to serve as representatives of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

36. Plaintiffs are informed and believe that Defendant has violated and continues to violate provisions of the California Labor Code and applicable Wage orders related to the payment of minimum wages including overtime, premium compensation, reimbursement, failure to pay all wages upon end of employment, and failure to provide compliant wage statements.

37. Plaintiffs, as representatives of the people of the state of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 *et seq.*, and 2802.

38. Plaintiffs, as personal representatives of the general public, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Liability Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

39. Additionally, Plaintiffs and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code sections 2699(g)(1), 218.5, 1194, and to prejudgment interest.

a. Violation of PAGA for Failure to Pay Minimum and Overtime Wages.

40. Plaintiffs and Aggrieved Employees re-allege and incorporate by reference the above paragraphs in their entirety as if fully alleged herein.

41. Plaintiffs and Aggrieved Employees regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiffs and Aggrieved Employees minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for Defendant.

1 42. Defendant willfully violated the Labor Code when Defendant failed to pay Plaintiffs and
2 Aggrieved Employees the legally mandated wage rates for all hours worked. Instead, Defendant paid
3 Plaintiffs and Aggrieved Employees under a “Rounding Policy” that is not fair and neutral and resulted,
4 over a period of time, in failure to compensate the employees properly for all the time they have actually
5 worked, thereby causing Plaintiffs and Aggrieved Employees to work in excess of eight (8) hours per
6 day and/or forty (40) hours per week.

7 43. Further, Defendant failed to include all remuneration paid to Plaintiffs and Aggrieved
8 Employees when computing hourly non-exempt employees’ regular rate of pay resulting from
9 Defendant’s failure to do a weighted average and include all remuneration paid to hourly non-exempt
10 employees for non-discretionary bonuses, shift differential premium, and other types of remuneration,
11 which are not statutory exclusions when calculating hourly non-exempt employees’ regular rate for
12 purposes of overtime payments.

13 44. Additionally, Defendant required Plaintiffs and Aggrieved Employees to work off the
14 clock without compensation. Defendant required Plaintiffs and Aggrieved Employees to work beyond
15 the scheduled ends of their shifts to complete job assignments without compensation for their time
16 worked. Defendant required Plaintiffs and Aggrieved Employees to attend to “emergency calls,” which
17 required additional time spent to deal with issues such as flooding. Defendant failed to pay Plaintiffs and
18 Aggrieved Employees for time worked beyond the scheduled ends of their shift attending to “emergency
19 call” job assignments. Further, Defendant’s management manipulated Plaintiffs’ and Aggrieved
20 Employees’ time records in violation of the California Labor Code in an effort to avoid paying lawful
21 wages. Defendant failed to compensate Plaintiffs and Aggrieved Employees for time spent working
22 beyond the ends of their shifts in violation of the various applicable Wage Orders, regulations and
23 statutes.

24 45. Additionally, Defendant required Plaintiffs and Aggrieved Employees to submit records
25 of their hours worked and required them to input times that reflected scheduled shift times or hours which
26 omitted substantial regular and overtime hours from their daily work shifts. Defendant compelled and
27 pressured Plaintiffs and Aggrieved Employees into submitting manually rounded timekeeping records
28 that were not a true reflection of the time Plaintiff and the Aggrieved Employees actually spent under the
control of Defendant for any given day. Additionally, Defendant automatically deducted thirty-minute

meal periods from Plaintiffs and Aggrieved Employees despite the fact that Plaintiffs and Aggrieved Employees were required to work through their meal breaks. Thus, Plaintiffs and Aggrieved Employees were on duty during portions of their meal periods and were not compensated for this time, thereby resulting in off-the-clock work.

46. Plaintiffs, individually and on behalf of Aggrieved Employees, request recovery of statutory penalties against Defendant, and each of them, pursuant to PAGA for failure to pay all wages pursuant to Labor Code sections 510 and 1194 during the Liability Period, in a sum as provided by the Labor Code and/or other statutes.

b. Violation of PAGA for Failure to Provide Meal Periods or Compensation in Lieu Thereof.

47. Plaintiffs and Aggrieved Employees re-allege and incorporate by reference all the above paragraphs of this Complaint as if fully alleged herein.

48. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30) minutes.

49. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

50. Defendant failed to schedule Plaintiffs and Aggrieved Employees in an overlapping manner so as to reasonably ensure that Plaintiffs and Aggrieved Employees could take and/or receive such meal periods uninterrupted and within the statutory timeframe. As a result, Plaintiffs and Aggrieved Employees were often forced to forego a timely uninterrupted meal period and/or work during their meal period. In so doing, Defendant has intentionally and improperly denied timely uninterrupted meal periods to Plaintiffs and Aggrieved Employees in violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

51. At all times relevant hereto, Plaintiffs and Aggrieved Employees have worked more than five (5) hours in a workday.

52. At varying times relevant hereto, Plaintiffs and Aggrieved Employees have worked more

1 than ten (10) hours in a workday.

2 53. At all times relevant hereto, Defendant failed to schedule Plaintiffs and Aggrieved
3 Employees in a manner so as to reasonably provide timely uninterrupted thirty (30) minute meal and/or
4 work-free meal periods as required by Labor Code sections 226.7 and 512.

5 54. By virtue of Defendant's failure to schedule Plaintiffs and Aggrieved Employees in such
6 a way as to provide a timely and uninterrupted meal period, and/or work-free meal period to Plaintiffs
7 and Aggrieved Employees, thereby causing Plaintiffs and Aggrieved Employees to suffer, and will
8 continue to suffer, damages in the amounts which are presently unknown, but which exceed the
9 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

10 55. Plaintiffs, individually and on behalf of Aggrieved Employees, request recovery of
11 statutory penalties against Defendant, and each of them, pursuant to PAGA for failure to provide meal
12 period compensation pursuant to Labor Code sections 226.7 and 512 during the Liability Period, in a
13 sum as provided by the Labor Code and/or other statutes.

14 **c. Violation of PAGA for Failure to Provide Rest Periods or Compensation in Lieu Thereof.**

15 56. Plaintiffs and Aggrieved Employees re-allege and incorporate by reference all the above
16 paragraphs of this Complaint as if fully alleged herein.

17 57. Labor Code section 226.7 provides that employers authorize and permit all employees to
18 take rest periods at the rate of ten (10) minutes rest time per four (4) work hours or major fraction thereof.

19 58. Labor Code section 226.7(b) provides that if an employer fails to provide an employee
20 rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at
21 the employee's regular rate of compensation for each workday that the rest period is not provided.

22 59. Defendant failed and or refused to implement a relief system by which Plaintiffs and
23 Aggrieved Employees could receive rest breaks and/or work-free rest breaks. Furthermore, due to
24 Defendant's relief system, Plaintiffs and Aggrieved Employees did not receive their rest breaks within
25 the required statutory time frame. By and through its actions, Defendant intentionally and improperly
26 denied rest periods to Plaintiffs and Aggrieved Employees in violation of Labor Code sections 226.7
27 and 512.

28 60. At all times relevant hereto, Plaintiffs and Aggrieved Employees have worked more than
four (4) hours in a workday.

1 61. By virtue of Defendant's unlawful failure to provide rest periods to Plaintiffs and
2 Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiffs and Aggrieved
3 Employees have suffered, and will continue to suffer, damages in amounts which are presently
4 unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained
5 according to proof at trial.

6 62. Plaintiffs, individually and on behalf of Aggrieved Employees, request recovery of
7 statutory penalties against Defendant, and each of them, pursuant to PAGA for failure to provide rest
8 period compensation pursuant to Labor Code section 226.7 during the Liability Period, in a sum as
9 provided by the Labor Code and/or other statutes.

10 **d. Violation of PAGA for Failure to Provide Accurate Wage Statements.**

11 63. Plaintiffs and Aggrieved Employees re-allege and incorporate by reference the above
12 paragraphs in their entirety as if fully alleged herein.

13 64. Labor Code sections 226, 226.3, 1174 and 1174.5 and applicable IWC Wage Orders
14 provide that employers must keep records and provide employees with itemized wage statements
15 showing total hours worked and each applicable rate of pay in effect during the pay period with the
16 corresponding number of hours worked at each hourly rate.

17 65. Labor Code section 226, subdivision (a), requires an employer provide employees –
18 either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
19 when wages are paid by personal check or cash -- an accurate itemized wage statement in writing
20 showing, as pertinent here: "(1) gross wages earned, (2) total hours worked by the employee, . . . (4) all
21 deductions, (5) net wages, (6) the inclusive dates of the period for which the employee is paid, (7) the
22 name of the employee and only the last four digits of his or her social security number or an employee
23 identification number other than a social security number, (8) the name and address of the legal entity
24 that is the employer, and (9) all applicable hourly rates in effect during the pay period and corresponding
25 number of hours worked at each hourly rate by the employee."

26 66. Defendant willfully violated Labor Code section 226(a) by failing to provide Plaintiffs
27 and Aggrieved Employees with wage statements that accurately reflect the total hours worked, the
28 accurate rate of pay for each hour worked, and the accurate net and gross wages earned.

1 67. IWC Wage Order Number 16-2001, paragraph 6(A), requires that every employer shall
2 keep accurate information with respect to each employee, including time records showing when each
3 employee begins and ends each work period, the total daily hours worked by each employee and the
4 total hours worked in each payroll period, applicable rates of pay, and net and gross wages earned.

5 68. Plaintiffs are informed and believe that Defendant willfully and intentionally failed to
6 make and/or keep records which accurately reflect the hours worked by Plaintiffs and Aggrieved
7 Employees. Specifically, Plaintiffs believe that Defendant's records do not accurately reflect the start
8 and end times Plaintiffs and Aggrieved Employees were required to work due to Defendant's conduct
9 as described herein.

10 69. Plaintiffs are informed and believe that Defendant willfully and intentionally failed to
11 make and/or keep records which accurately reflect the accurate net and gross wages earned by Plaintiffs
12 and Aggrieved Employees, who were not paid all wages due them, including but not limited to minimum
13 and/or overtime wages as a result of Defendant's non-neutral rounding policy and failure to pay premium
14 compensation.

15 70. Plaintiffs are informed and believe that Defendant's failure to keep accurate payroll
16 records, as described above, violated Labor Code section 1174, subdivision (d), and the applicable wage
17 order.

18 71. Plaintiffs, individually and on behalf of Aggrieved Employees, request recovery of
19 statutory penalties against Defendant, and each of them, pursuant to PAGA for failure to provide
20 accurate itemized wage statements pursuant to Labor Code section 226 during the Liability Period, in a
21 sum as provided by the Labor Code and/or other statutes.

22 **e. Violation of PAGA for Failure to Pay Wages Upon Ending Employment.**

23 72. Plaintiffs and Aggrieved Employees re-allege and incorporate by reference the above
24 paragraphs in their entirety as if fully alleged herein.

25 73. Plaintiffs and certain Aggrieved Employees who ended their employment with Defendant
26 during the Liability Period were entitled to be promptly paid both minimum wage and lawful overtime
27 compensation and other premiums, as required by Labor Code §§ 201-203. Defendant refused and/or
28

1 failed to promptly compensate Plaintiffs and Aggrieved Employees wages owed as a result of their failure
2 to pay Plaintiffs and Aggrieved Employees both minimum wage and overtime compensation.

3 74. Plaintiffs, individually and on behalf of Aggrieved Employees, request recovery of
4 statutory penalties against Defendant, and each of them, pursuant to PAGA for failure to pay wages due
5 upon end of employment pursuant to Labor Code sections 201-203 during the Liability Period, in a sum
6 as provided by the Labor Code and/or other statutes.

7 **f. Violation of PAGA for Failure to Reimburse for All Necessary Expenditures.**

8 75. Plaintiffs and Aggrieved Employees re-allege and incorporate by reference the above
9 paragraphs in their entirety as if fully alleged herein.

10 76. Labor Code section 2802 provides that employers must indemnify employees for all
11 necessary expenditures or losses incurred in direct consequence of the discharge of employees' duties.

12 77. Defendant required Plaintiffs and Aggrieved Employees to use their personal vehicles to
13 drive to various work sites in carrying out their job duties. Defendant failed to reimburse employees at
14 the applicable statutory mileage reimbursement rate and instead only compensated Plaintiffs and
15 Aggrieved Employees at a rate of 40 cents per mile, far below the statutory mileage reimbursement rate,
16 which ranged from 57 to 58 cents per mile during the Liability Period.

17 78. On other occasions, Defendant provided Plaintiffs and Aggrieved Employees with a gas
18 card but failed to reimburse Plaintiffs and Aggrieved Employees for the wear and tear on their personal
19 vehicles stemming from the use of their personal vehicles in carrying out their job duties. Defendant
20 failed to reimburse Plaintiffs and Aggrieved Employees for the use of their personal vehicles in violation
21 of Labor Code section 2802 and therefore is liable for civil penalties under PAGA.

22 79. Additionally, Defendant required Plaintiffs and Aggrieved Employees to incur business
23 expenses in the course of performing their required job duties for Defendant, namely, the cost of cellular
24 telephone services.

25 80. Defendant failed to reimburse Plaintiffs and Aggrieved Employees for all necessary
26 expenditures incurred in the discharge of their duties in violation of Labor Code section 2802.

27 81. Plaintiffs, individually and on behalf of Aggrieved Employees, request recovery of
28 statutory penalties against Defendant, and each of them, pursuant to PAGA for failure to reimburse for

1 necessary expenditures pursuant to Labor Code section 2802 during the Liability Period, in a sum as
2 provided by the Labor Code and/or other statutes.

3 **VII.**

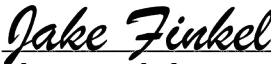
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs and Aggrieved Employees pray for judgment as follows:

- 6 1. For civil penalties for each violation for Plaintiffs and each Aggrieved Employee as
7 provided by law, including but not limited to, those civil penalties provided by statute, under PAGA;
8 2. For costs of suit and expenses incurred herein pursuant to Labor Code §§ 2699(g) and
9 any other statutory basis or pursuant to the California Rules of Court;
10 3. For reasonable attorneys' fees pursuant to Labor Code §§ 2699(g) and any other
11 statutory basis, and;
12 4. For all such other and further relief as the Court may deem just and proper.

13
14 Dated: August 5, 2022

LAW OFFICES OF JAKE D. FINKEL

15
16 

17 Jake D. Finkel, Esq.

18 Attorneys for Plaintiff THOMAS FELTEN
19 on behalf of all employees similarly situated

20 Dated: August 5, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

21
22 

23 David Yeremian, Esq.

24 Natalie Haritounian, Esq.

25 Attorneys for Plaintiff NAHUJA BRUNO
26 on behalf of all employees similarly situated
27
28

DEMAND FOR JURY TRIAL

Plaintiffs THOMAS FELTEN and NAHUJA BRUNO hereby request a jury trial on all issues so triable.

Dated: August 5, 2022

LAW OFFICES OF JAKE D. FINKEL, APC

Jake Finkel

Jake D. Finkel, Esq.

Attorneys for Plaintiff THOMAS FELTEN
on behalf of all employees similarly situated

Dated: August 5, 2022

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian, Esq.

Natalie Haritounian, Esq.

Attorneys for Plaintiff NAHUJA BRUNO
on behalf of all employees similarly situated

EXHIBIT A



JAKE D. FINKEL, ESQ.
3470 WILSHIRE BLVD. SUITE 830 | LOS ANGELES, CA 90010
T. (213) 787-7411 | F. (323) 916-0521 | E. JAKE@LAWFINKEL.COM

April 3, 2020

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY

PAGAFilings@dir.ca.gov

VIA U.S. MAIL & CERTIFIED MAIL No. 7019-2280-0001-6873-8499

Return Receipt Requested

Protec Association Services Inc.

Attn: J. David Rauch, CEO

10180 Willow Creek Road

San Diego, CA 92131

Re: *Thomas Felten v. Protec Association Services Inc. dba Protec Building Services*

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency, Protec Association Services Inc., dba Protec Building Services

From: Thomas Felten, on behalf of himself and similarly aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Law Offices of Jake D. Finkel, represents the interests of Mr. Thomas Felten (referred to hereinafter as "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA") on behalf of his and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Protec Association Services Inc. dba Protec Building Services a (hereinafter referred to as "Employer") is a HOA General Contractor founded in 1996 with its principal business office in San Diego, California. Employer provides general contracting services across Southern California and Southern Nevada. Employee was hired as a maintenance technician and welder and on or about November 2013 through the end of his employment on or about September 4, 2019. Employee alleges Employer violated various sections of the Labor Code, including §§ 201, 202, 203, 204, 222, 223, 226, 226.7, 510, 512, 558, 2802, 1174, 1194, and 1197 by failing to

provide Employee and all other aggrieved employees all wages for all hours worked including, but not limited to, regular hours and overtime hours in addition to unpaid meal and rest premium compensation.

Employer failed to pay Employee and other aggrieved employees for all hours worked at the legally mandated wage rates for all hours worked. Employer also failed to pay Employee and his co-workers the legally mandated regular and overtime rate for all work performed during their shifts in violation of California law. Specifically, Employer required Employee and his coworkers to work under a “Rounding Policy” that is not fair and neutral and resulted, over a period of time, in failure to compensate the employees properly for all the time they have actually worked, and as a result Employer willfully failed and refused, and continues to fail and refuse to pay compensation for all hours worked, including minimum wage and lawful overtime compensation to Employee and his coworkers. Further, Employer failed to include all remuneration paid to Employee and his coworkers when computing hourly non-exempt employees’ regular rate of pay resulting from Employer’s failure to do a weighted average and include all remuneration paid to hourly non-exempt employees for non-discretionary bonus, shift differential premium, and other types of remuneration, which are not statutory exclusions when calculating hourly non-exempt employees’ regular rate for purposes of overtime payments. Employer’s conduct, which is in violation of Labor Code sections 510 and 1194, is actionable under PAGA.

Further, Employer required Employee and similarly aggrieved employees to work off the clock without compensation. Employer required Employee and his coworkers to work beyond the scheduled end of their shifts to complete job assignments without compensation for their time worked. Employer required Employee and his coworkers to attend to “emergency calls” which required additional time spent to deal with issues such as flooding. Employer failed to pay Employee and similarly aggrieved employees for time worked beyond the scheduled end of their shift attending to “emergency call” job assignments. Employer’s management manipulated Employee’s and his coworker’s time records in violation of the California Labor Code. Employer failed to compensate Employee and his coworkers for time spent working beyond the end of their shift. As such, Employer’s conduct is in violation of Labor Code sections 510 and 1194 and is actionable under PAGA.

Further, Employer failed to provide Employee and other aggrieved employees with lawful, timely, and uninterrupted meal and rest periods. Due to Employer’s policy and practices Employee and his co-workers did not receive lawful and timely uninterrupted meal and rest periods and was not compensated with his owed premium compensation. Employee and his coworkers would either be required to forgo, shorten, interrupt, or take a late meal or rest period and instead attend to their job duties. Employer also failed to provide Employee and his coworkers with a second meal period when working a shift longer than ten hours in length. Even though Employee and his co-workers were prevented from taking lawful timely uninterrupted meal and rest periods, Employer failed to provide them with premium pay for every untimely, missed, shortened, or interrupted meal period and rest period. Employer’s conduct, which is in violation of Labor Code sections 226.7 and 512, is also actionable under PAGA.

As a further result of Employer’s failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice and procedure of failing to pay all wages earned to former employees and is therefore actionable under PAGA.

As a result of Employer’s failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Employee and other aggrieved employees with complete and accurate wage statements showing the actual hours worked, accurate rate of pay for each hour worked, and accurate gross and net wages earned per pay period. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

April 3, 2020

Page 3 of 3

Further, Employer required Employee and similarly aggrieved employees to use their personal vehicles to drive to various work sites in carrying out their job duties. Employer failed to reimburse employees at the applicable statutory mileage reimbursement rate and instead only compensated Employee and his coworkers at a rate of 40 cents per mile, far below the statutory mileage reimbursement rate which ranged from 57 to 58 cents per mile during the applicable liability period. On other occasions, Employer provided Employee and his coworkers with a gas card but failed to reimburse Employee and his coworkers for the wear and tear on their personal vehicles stemming from the use of their personal vehicles in carrying out their job duties. Employer failed to reimburse Employee and similarly aggrieved employees for the use of their personal vehicles in violation of Labor Code section 2802 and therefore is actionable under PAGA.

Employee will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Perez', with a stylized flourish at the end.

Alexander Perez, Esq.
Law Offices of Jake D. Finkel

EXHIBIT B

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM;
NATALIE@YEREMIANLAW.COM

noviembre 4, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

ProTec Association Services, d/b/a ProTec Building Services
John David Rouch, Agent for Service of Process
10180 Willow Creek Road
San Diego, CA 92131
Certified Mail Tracking Number: 7019 2970 0000 5059 9951

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter
*Nahuja Bruno, et al. v. ProTec Association Services, et al.***

Gentlepersons:

This office represents Plaintiff Nahuja Bruno (“Plaintiff”) and other aggrieved employees for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 245, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802 provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff wishes to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, ProTec Association Services, d/b/a ProTec Building Services, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, hourly employee based out of Defendants’ facility in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees.” Aggrieved Employees consistently worked at Defendants’ behest and under their control and subject to their policies and practices without

being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, unlawful rounding to their detriment, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse for necessary business expenses, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Specifically, Defendants required Aggrieved Employees to submit records of their hours worked and required them to input times that reflected scheduled shift times or hours which omitted substantial regular and overtime hours from their daily work shifts. Defendants compelled and pressured Aggrieved Employees into submitting manually rounded timekeeping records that were not a true reflection of the time Plaintiff and the Aggrieved Employees actually spent under the control of Defendants for any given day. Additionally, Defendants automatically deducted thirty minute meal periods from Aggrieved Employees despite the fact that Aggrieved Employees were required to work through their meal breaks. Thus, Aggrieved Employees were on duty during portions of their meal period and were not compensated for this time thereby resulting in off the clock work.

Moreover, Defendants had a consistent policy and practice of unlawfully rounding hours worked to the detriment of Aggrieved Employees. Rather than paying Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or 30- minute time increment). Generally, rounding was to the detriment of Aggrieved Employees, and Plaintiff contends this policy is not neutral and resulted, over time, in the systematic under-compensation of the Aggrieved Employees. Rather than reflecting the actual hours worked by Aggrieved Employees, the time entries were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and also rounded down the hours worked by Aggrieved Employees, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described unlawful rounding, requirements to work off the clock, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when

working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift, but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks and this resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. To the extent Aggrieved Employees were able to take rest breaks, they were restricted from leaving the premises. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded

time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported and also due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work, and unlawfully rounded time entries to the detriment of Aggrieved Employees. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing their required job duties for Defendants, namely, the cost of cellular telephone services and the cost of purchasing supplies which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ as well as mileage. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

As addressed above, Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were required to work off the clock without pay and were subject to unlawful rounding of hours. Moreover, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved employees further request recovery of all unpaid wages,

according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and the applicable IWC Wage Order, paragraph 4(A)-4(D).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Defendants failed to pay Aggrieved Employees for all hours worked and failed to pay overtime compensation at premium overtime rates. Defendants had a consistent policy of not paying Aggrieved Employees for all hours worked, including by requiring off the clock work and by unlawfully rounding down actual hours worked. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable IWC Wage Order, paragraph 3(A) and 4(B).

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with timely and uninterrupted meal periods of not less than thirty (30) minutes as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Defendants placed their needs over Aggrieved Employees lawful meal breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled meal breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break, in violation of the Labor Code and applicable Wage Orders. Defendants placed their needs over Aggrieved Employees lawful meal breaks. Thus, Aggrieved Employees did not receive a complaint meal break. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 11.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Defendants placed their needs over Aggrieved Employees'

lawful rest breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty rest break. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 12.

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and the applicable IWC Wage Order, paragraph 7(B), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

In addition, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of himself and the Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

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Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees, including Plaintiff, no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Reimbursement of Necessary Expenditures Under Labor Code § 2802

Under Labor Code § 2802(a) an employer must indemnify its employees 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. In the present case, Aggrieved Employees incurred necessary expenditures in the performance of their job duties for Defendants, namely, the cost of cellular telephone services and the cost of purchasing supplies, which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ as well as mileage. Plaintiff and Aggrieved Employees were not reimbursed for those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

Conclusion

We have been constrained to initially move forward with the filing of a complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against ProTec Association Services, d/b/a ProTec Building Services. To prevent the violations described herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

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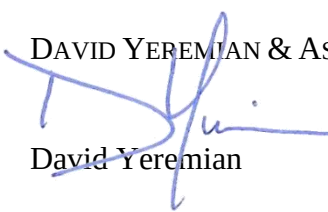
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Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in a complaint with the Superior Court.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Defendants by Certified Mail