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on behalf of herself and others similarly situated  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF FRESNO**

10 VIDALI ALEMAN, an individual on behalf  
11 of herself and all others similarly situated,

12 Plaintiff,

13 vs.

14 MOONLIGHT PACKING CORPORATION,  
a California corporation; MOONLIGHT  
15 PACKING COMPANY, LLC, a California  
limited liability company, and DOES 1  
16 through 50, inclusive,

17 Defendants.  
18  
19  
20  
21  
22

Case No.: 20CECG01196

CLASS ACTION

Assigned For All Purposes to  
The Honorable Kristi Culver Kapetan

**DECLARATION OF DAVID YEREMIAN  
IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF THE  
CLASS ACTION SETTLEMENT**

*[Filed concurrently with Plaintiff's Notice of  
Motion and Motion; Memorandum of Points  
and Authorities; Declaration of Natalie  
Haritounian; Declaration of Vidali Aleman;  
Declaration of Jarrett Gorlick; and [Proposed]  
Order]*

Date: December 13, 2022  
Time: 3:30 p.m.  
Dept: 403



1 focused on employment matters, with a substantial percentage devoted to litigating wage, hour,  
2 and working-conditions violations on a class-wide basis.

3 5. I graduated from UC Berkeley in 1997 and received my law degree and MBA from  
4 UCLA in 2001. I am a member of the Los Angeles County Bar Association and the California  
5 Employment Lawyers Association. I have been honored as a Super Lawyers Rising Star in 2009,  
6 2010, 2012-2015. I have been named and honored as a Super Lawyer since 2016.

7 6. I have been practicing law since 2003. Since 2007, I have focused almost exclusively  
8 on representing employees, including in wage-and-hour class actions. During my career I have  
9 represented employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel  
10 (including in the Central, Southern, Eastern and Northern Districts of California), and I have  
11 obtained six and seven figure settlements against a range of defendants, including Fortune 500  
12 companies. These cases have involved the gamut of wage-and-hour claims, including claims for  
13 failure to pay minimum wages, unpaid wages and overtime, failure to provide meal breaks,  
14 inaccurate pay statements, and failure to pay timely wages - similar to claims at issue in the  
15 present matter.

16 7. I am experienced in prosecuting employment matters, particularly class actions. In  
17 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour  
18 class-action lawsuits pending in various state and federal jurisdictions throughout California.

19 8. My extensive experience in litigating employment wage and hour matters has been  
20 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and  
21 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of  
22 wage and hour litigation requires skill and knowledge concerning the constantly evolving  
23 substantive law (state and federal), as well as the procedural law of class action litigation. In this  
24 action, I am fully equipped to use the skills and knowledge I have developed through more than a  
25 decade of prosecuting and defending wage and hour class actions to fairly and adequately  
26 represent the interests of the Class. Therefore, on the account of my resources, experience, and  
27 knowledge, I am well qualified to act as Class Counsel and represent Plaintiff and the putative  
28 Class Members in this action.

1       9.     In the last several years I have had several contested class cases certified. When  
2 necessary we pursue cases on appeal. Owing to my experience, I am well qualified to evaluate the  
3 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated  
4 over 100 class action settlements, including many involving the same issues presented in this  
5 case. A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis*  
6 *v. Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);  
7 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead  
8 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size  
9 approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400;  
10 lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead  
11 counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx.  
12 860; lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead  
13 counsel); *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600;  
14 lead counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx.  
15 300; lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead  
16 counsel); *Utlely v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead  
17 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead  
18 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead  
19 counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel);  
20 *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel);  
21 *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead  
22 counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel);  
23 *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479;  
24 class size approx 60; lead counsel).

25       10.    For purposes of this motion, the “Class” or “Class Members” consist of “all current and  
26 former non-exempt packing employees who worked for Defendants in California at any time  
27 between May 4, 2016 and January 19, 2021.” I do not believe that I have any conflicts of interest  
28 with the Class or with the Class Representative. I am not related to the Class Representative. I

1 have not previously represented Defendants in any matter. I respectfully submit that I, and David  
2 Yeremian & Associates, Inc. are well suited to act as Class Counsel in this action, and we have  
3 and will continue to vigorously represent the interests of the Class Members.

#### 4 **PROCEDURAL HISTORY**

5 11. On May 4, 2020, Plaintiff filed a class action complaint against Defendants alleging  
6 eleven causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and  
7 Overtime Under Labor Code § 510; (3) Failure to Pay Reporting Time Pay; (4) Meal Period  
8 Liability Under Labor Code § 226(a); (5) Rest-Break Liability Under Labor Code § 226.7; (6)  
9 Violation of Labor Code § 226(a); (7) Violation of Labor Code § 203; (8) Violation of Labor  
10 Code § 204; (9) Violation of Labor Code § 221; (10) Failure to Keep Required Payroll Records  
11 Under Labor Code §§ 1174 and 1174.5; and (11) Violation of Business & Professions Code §  
12 17200 *et seq.* Plaintiff alleges Defendants failed to pay minimum wages and overtime for all  
13 hours worked, failed to pay for reporting time pay, failed to provide compliant meal and rest  
14 breaks, failed to pay premium wages for missed meal and rest breaks, failed to furnish accurate  
15 wage statements, failed to timely pay wages including final wages, and failed to maintain  
16 accurate records.

17 12. On April 6, 2020, Plaintiff submitted a Private Attorneys General Act (“PAGA”)   
18 notice letter to the Labor Workforce Development Agency (“LWDA”) and served Defendants. A  
19 true and correct copy of the confirmatory email and the LWDA letter submitted on behalf of  
20 Plaintiff is attached hereto as **Exhibit 2**. The LWDA did not express an interest in investigating  
21 Plaintiff’s claims within the 65-day period. Therefore, on June 10, 2020, Plaintiff filed a First  
22 Amended Complaint adding a cause of action for penalties under the Private Attorneys General  
23 Act (“PAGA”).

#### 24 **INVESTIGATION AND DISCOVERY**

25 13. I have participated in all discovery, mediation and negotiations since the inception of  
26 Plaintiff’s case. Before filing the lawsuit, Class Counsel investigated and researched the facts and  
27 circumstances underlying the pertinent issues and the law applicable thereto. This required  
28 thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary

1 research into the various legal issues involved in the case. After conducting their initial  
2 investigation, Class Counsel determined that Plaintiff's claims were well-suited for class and  
3 representative action adjudication owing to what appeared to be a common course of conduct  
4 affecting a similarly situated group of employees.

5 14. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts  
6 and claims giving rise to the action, including: (1) conducting discovery, and meeting and  
7 conferring with defense counsel about same; (2) reviewing and analyzing time and pay records as  
8 well as employment handbooks, Plaintiff's personnel file, relevant policies and other  
9 documentation; (3) researching the applicable law and potential defenses; (4) constructing  
10 damage models based on interpretations of California law; and (5) reviewing information  
11 provided by Defendants at the mediation. The Class enumerated in this action is ascertainable  
12 because the Class Members may be readily identified by reference to Defendants' records.  
13 Defendants have agreed to share the information from these records with the Settlement  
14 Administrator in order to identify and contact the Class Members. I understand there are  
15 approximately 1,672 total Class Members.

16 15. Defendants, for their part, vigorously contested liability, the amount of claimed  
17 damages, and the propriety of class certification. After Class Counsel analyzed the relevant  
18 documents and other gathered data, Class Counsel believed that this case was appropriate for  
19 resolution via mediation. Given the high level of risk present for both sides, the parties elected to  
20 mediate Plaintiff's claims and explore the possibility of settlement.

21 16. On November 18, 2020, the parties mediated this case with Honorable Howard  
22 Broadman (Ret.), a respected and highly experienced mediator in wage and hour class actions.  
23 During mediation, Plaintiff and Defendants' counsel discussed all aspects of the case, including  
24 the risks of litigation and the risks to both parties of proceeding with a motion for class  
25 certification as well as the law relating to unpaid wages, meal periods, rest periods, wage  
26 statements, and final pay. As a result of the mediation, the parties agreed to settle the lawsuit  
27 according to the terms set forth in the Settlement Agreement. From Class Counsel's review of the  
28 facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and

1 Class Counsel's own prior litigation experience, Class Counsel believes that the recovery for each  
2 class member is fair and reasonable taking into consideration the amounts received in other wage  
3 and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of  
4 each Class Member's claim to the settlement award he or she will receive. Further, and based on  
5 the settlement negotiations, which were extensive and conducted in good faith and at arm's length  
6 between attorneys with substantial experience litigating class actions and wage and hour cases,  
7 the Settlement Agreement was the product of a non-collusive settlement process in which the  
8 parties were forced to make significant compromises in the interest of reaching a full and  
9 complete settlement of the lawsuit.

#### 10 **SUMMARY OF SETTLEMENT**

11 17. The parties have executed a Joint Stipulation of Class Action Settlement ("Settlement  
12 Agreement" or "Settlement") attached hereto and incorporated herein as **Exhibit 1**. Defendants  
13 have agreed to pay Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) ("Gross  
14 Settlement Amount") on a non-reversionary basis to settle and release all claims asserted by  
15 Plaintiff in the Class Action and PAGA Action on behalf of the proposed Class. (Exh. 1, §13.)

16 18. The Settlement Agreement defines the "Class" or "Class Members" as "all current and  
17 former non-exempt packing employees who worked for Defendants in California at any time  
18 between May 4, 2016 and January 19, 2021." (Exh. 1, §6.) However, it does not include any  
19 person who submits a timely and valid request for exclusion. (Exh. 1, §6.) "Class Period" means  
20 the period from May 4, 2016 to January 19, 2021. (Exh. 1, §7.)

21 19. The "Net Settlement Amount" shall be the Gross Settlement Amount, less the  
22 Attorneys' Fees and Costs, the Class Representative Enhancement Payment, Settlement  
23 Administration Costs, and seventy-five percent (75%) of the LWDA Payment. (Exh. 1, §14.)  
24 These amounts are detailed as follows:

- 25 • not more than Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) to  
26 Class Counsel for attorneys' fees, and not more than Seventeen Thousand Dollars  
27 and Zero Cents (\$17,000.00) in reasonable litigation costs (Exh. 1, §33.);
- 28 • not more than Fourteen Thousand Dollars and Zero Cents (\$14,000.00) for the

1 Settlement Administration Costs (Exh. 1, §35.);

- 2 • not more than Five Thousand Dollars and Zero Cents (\$5,000.00) for a Class  
3 Representative Enhancement Payment (Exh. 1, § 34.), and;  
4 • Thirty Thousand Dollars and Zero Cents (\$30,000.00) for civil penalties under the  
5 PAGA, where 75% (\$22,500.00) will be paid to the LWDA and 25% (\$7,500.00)  
6 will be included in the Net Settlement Amount and distributed to Settlement Class  
7 Members). (Exh. 1, §36.)

8 20. The “Individual Settlement Payment,” which is each Class Member’s share of the Net  
9 Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on  
10 the number of workweeks a Class Member worked during the Class Period as a non-exempt  
11 employee in California. (Exh. 1, §37.)

12 21. Defendants’ corporate payroll tax obligations shall be paid in addition to the Gross  
13 Settlement Amount, and none of the Gross Settlement Amount will revert to Defendants. (Exh. 1,  
14 §13.)

15 22. The settlement amount was a compromise figure, factoring in the inherent risks related  
16 to certification, liability and damages. However, taking into account all of the circumstances of  
17 the action and the defenses raised by Defendants against certification, liability and damages,  
18 Class Counsel believes that the settlement is fair and reasonable.

19 23. Class Members shall each receive a Notice of Class Action Settlement, Opt-out Form,  
20 and Objection Form (“Notice Packet”) via regular First Class U.S. Mail, using the most current,  
21 known mailing addresses identified in the Class List. (Exh. 1, §41.) Before mailing, the  
22 Settlement Administrator will perform a search based on the National Change of Address  
23 Database for information to update and correct for any known or identifiable address changes.  
24 (Exh. 1, §42.) If the Notice Packet is returned as non-deliverable on or before the Response  
25 Deadline and a new address is obtained by way of a returned Notice Packet, then the Settlement  
26 Administrator will promptly forward the original Notice Packet to the updated address via first-  
27 class regular U.S. mail, indicating on the original packet the date of such re-mailing. (Exh. 1,  
28 §42.) The Notice will be in English and will also be translated in Spanish.

1       24.    Class Members will have an opportunity to dispute the information provided in their  
2 Notice Packet and they must timely produce evidence to support the information is inaccurate.  
3 (Exh. 1, §44.) The Settlement Administrator shall decide the dispute and may ask Defendants to  
4 produce the personnel and payroll files of the Class Member disputing their credited workweeks  
5 in order to resolve the dispute. (Exh. 1, §44.)

6       25.    Class Members wishing to opt-out from the Settlement Agreement must sign and  
7 postmark a written Request for Exclusion to the Settlement Administrator within the “Notice  
8 Period.” (Exh. 1, §45.) The Exclusion Deadline will be forty-five (45) calendar days after the date  
9 the Notice Packet was mailed. (*Id.*) The delivery date is deemed to be the date the Opt-Out  
10 request is deposited in the U.S. Mail as evidenced by the postmark. (*Id.*)

11       26.    Class Members will also have the opportunity to object to the Settlement Agreement,  
12 by serving a copy of the objection to the Settlement Administrator. (Exh. 1, §48.) All objections  
13 must be served within forty-five (45) calendar days of first mailing of the Notice Packet. (*Id.*)  
14 Class Members who do not serve written objections may not object to the settlement by way of  
15 appeal. (*Id.*)

16                                   **THE STRENGTH OF PLAINTIFF’ CASE**  
17                                   **IN LIGHT OF THE SETTLEMENT AMOUNT**

18       27.    Because the class consists of numerous employees, it was unlikely that the potential  
19 monetary claims of individual Class Members would have proved viable without the class-action  
20 mechanism. The Settlement Agreement should be approved in light of two California appellate  
21 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*  
22 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

23       28.    The strength of the Plaintiff’s case in light of the settlement amount is deemed by  
24 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175  
25 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendants failed to pay  
26 minimum wages and overtime, failed to pay for reporting time pay, failed to provide proper meal  
27 breaks or provide premium pay in lieu thereof, failed to provide proper rest breaks or provide  
28 premium pay in lieu thereof, failed to provide accurate wage statements, failed to timely pay all

1 wages including upon termination, and failed to maintain accurate records all in violation of  
2 California law. Plaintiff seek related violations of California's Business & Professions Code, and  
3 penalties pursuant to Labor Code § 2699 *et seq.* Plaintiff conducted discovery and investigated  
4 each of the claims they alleged. Specifically, Defendants produced the following: (a) all versions  
5 of Defendants' employee handbook in effect during the Class Period; (b) all versions of  
6 Defendants' policies and procedures pertaining to minimum wages, overtime, meal breaks, and  
7 rest breaks, which were in effect during the Class Period; (c) Plaintiff's personnel files; (d)  
8 Plaintiff's timekeeping and payroll records; (e) a sampling of the timekeeping and payroll  
9 records; and (f) information on the class demographics including the total number of Class  
10 Members during the Class Period, total number of Class Members during the PAGA Period, total  
11 number of current employees, total number of former employees in the relevant time period,  
12 average hourly rate of pay, total number of workweeks worked during the Class Period, and the  
13 total number of paychecks issued during the relevant time period. The merits of each of these  
14 claims will be addressed separately below.

15 29. Based on the data provided, Class Counsel estimated the following maximum exposure  
16 for each claim: unpaid wages claim at \$2,629,172, meal period claim at \$1,314,973, rest period  
17 claim at \$3,421,696, wage statement claim at \$1,238,450, waiting time penalties at \$3,759,908,  
18 and on PAGA, Plaintiff estimated the maximum exposure at \$1,271,600.

19 30. However, taking into account the difficulties of proof, Defendants' defenses, and other  
20 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other  
21 relief that the class could reasonably expect to be awarded at trial is significantly less than the  
22 maximum exposures listed above. The challenges of each individual claim is discussed below.

### 23 **Minimum Wages, Overtime and Reporting Time**

24 31. Plaintiff alleged that Defendants failed to pay Class Members minimum wages for all  
25 hours worked, in violation of minimum wage laws. Class Members all worked basically in the  
26 same position as packers (the class is defined as "all current and former non-exempt **packing**  
27 **employees** who worked for Defendants in California at any time between May 4, 2016 and  
28 January 19, 2021" (Exh. 1, §6 (emphasis added))) and were therefore subject to the same working

1 conditions, policies and procedures. Plaintiff contended that Class Members were not paid all  
2 wages they were owed including all overtime hours worked owing to time spent working off the  
3 clock. Specifically, Plaintiff alleged Class Members had to wait in line to clock in at the  
4 beginning of their shift which would take several minutes. (Declaration of Vidali Aleman  
5 (“Aleman Decl.”) at ¶ 6.) Additionally, Plaintiff alleged at the end of each week, Class Members  
6 were required to clock out of the timekeeping system at the end of their shifts and wait in line to  
7 receive their paychecks. (*Id.*) Plaintiff also alleged Defendants would on occasion send Class  
8 Members home for lack of work who reported for their regularly scheduled shifts without paying  
9 reporting time pay. See **Exhibit 3** (sample time punch records evidencing some shifts ending  
10 prior to normal shift schedule). (Aleman Dec. at ¶ 7.)

11 32. Defendants argued that they paid for all reported hours worked, that Class Members  
12 were trained to record all hours worked, and that they paid proper minimum and overtime wages  
13 as required by California law. Defendants also maintained that the allegations regarding failure to  
14 pay wages for hours worked in excess of eight hours in a day did not constitute a basis for  
15 violation of Labor Code § 510. Defendants argued that given their policies and practices, any  
16 unrecorded hours are subject to individualized inquiry and unlikely to be certified.

17 33. Based on the foregoing facts, Class Counsel’s expert estimated Defendants’ exposure  
18 for unpaid wages to be approximately \$2,568,354 (using an estimate of 30 minutes of daily  
19 unpaid wages). (Declaration of Jarrett Gorlick (“Gorlick Decl.”) at ¶ 11.) However, Class  
20 Counsel believes this estimate is high based on the fact that if this claim were certified it would  
21 likely be limited to time spent waiting to clock in/out daily. As such Class Counsel believes a  
22 more realistic exposure is \$428,059 (which is approximately 5 minutes off the clock daily) for the  
23 unpaid wage claim. Class Counsel’s expert estimated the exposure for reporting time pay at  
24 \$60,818. (*Id.*)

25 34. Pursuant to the Settlement Agreement, the net settlement proceeds will be divided  
26 among the class based on the number of workweeks each one worked within the Class Period.  
27 The Settlement treats each Class Member as having been affected equally given that all Class  
28 Members were subject to Defendants’ same policies, procedures, and practices of clocking in and

1 out. For instance, Plaintiff's allegation that Class Members were required to work off the clock  
2 would apply to all Class Members given that all Class Members were required to wait in line for  
3 the time clock or that all Class Members would clock out and wait in line to receive their  
4 paychecks. (Aleman Decl. at ¶ 6, 12.)

#### 5 **Meal Periods and Rest Breaks**

6 35. Plaintiff alleged that Defendants consistently failed to provide timely and uninterrupted  
7 meal breaks to Class Members. (Aleman Decl. at ¶ 8.) *See Brinker Restaurant Corp. v. Super. Ct.*  
8 (2012) 53 Cal.4th 1004, 1040 (“[T]he wage order’s meal period requirement is satisfied if the  
9 employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is  
10 relieved of all duty for the entire period.”).

11 36. Plaintiff argued that Defendants had a common practice and policy of denying  
12 compliant meal periods and that Defendants’ meal policy was facially defective. A true and  
13 correct copy of Defendants’ Meal Break Policy is attached hereto as **Exhibit 4**. All Class  
14 Members were subject to this uniform policy. Plaintiff argued Class Members were regularly  
15 required to work through part of their meal periods or that some were provided after the end of  
16 their fifth consecutive hour of work. For each meal period missed, of less than 30 minutes, or  
17 taken late for which the employee was not provided a reasonable opportunity to take a complete  
18 and timely meal period, an employer must pay the employee an additional one hour of  
19 compensation. Labor Code § 226.7. This additional hour of compensation is referred to as  
20 “premium pay.” To comply with these laws, every employer must keep, for each employee,  
21 accurate time records showing when the employee begins and ends each work period and takes  
22 his or her meal periods. *See Wage Order 1-2001(7)(A)(3)*.

23 37. Defendants disagreed with Class Counsel’s interpretation of the law and facts.  
24 Defendants contended that meal breaks were implemented through a bell system thus ensuring a  
25 very high compliance rate and Class Members were given a reasonable opportunity to take their  
26 meal periods, and in fact received their meal periods most of the time. Plaintiff argued that since a  
27 bell system is a uniform practice applying to all Class Members it would be a factor in certifying  
28 the claim. For example, if the bell rang late, that would apply to all Class Members equally.

1       38. Class Counsel's expert estimated Defendants' maximum total exposure on the meal  
2 break claim at approximately \$1,314,973 based on an observed violation rate of 38%. (Gorlick  
3 Decl. at ¶ 12.) However, Class Counsel believes that owing to a compliant written policy as well  
4 as the bell system that certifying the meal period claim would be a challenge owing to the  
5 individualized nature of why an employee took a break late or perhaps decided to end their lunch  
6 early. Even if the claim were certified, the damages could be reduced owing to the individualized  
7 nature of the reasons a Class Member took a noncompliant break.

8       39. The same arguments applied to rest breaks. (Aleman Decl. at ¶ 9.) A true and correct  
9 copy of Defendants' Rest Break Policy is attached hereto as **Exhibit 4**. All Class Members were  
10 subject to this uniform policy. Plaintiff contended that Defendants did not provide Class Members  
11 with paid 10-minute rest breaks for every four hours or major fraction thereof. Class Members  
12 consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks  
13 of not less than ten minutes for each consecutive four-hour shift which they were denied. Plaintiff  
14 also alleged Defendants required Class Members to combine their rest breaks into one rest break  
15 and required them to take it towards the second half of their shifts.

16       40. Defendants maintained that their written policy was complaint and that they did  
17 provide the reasonable opportunity for Class Members to take duty-free rest breaks and that rest  
18 breaks were implemented through a bell system. Defendants also pointed out that, unlike meal  
19 periods, rest breaks need not be recorded and Defendants dispute all allegations that breaks were  
20 not received. As these considerations would likely depress the damages *vel non* ultimately  
21 awarded, Class Counsel applied significant and appropriate discounts to the rest-break claim.

22       41. Class Counsel's expert estimated Defendants' maximum total exposure on the rest  
23 break claim at approximately \$3,421,696. (Gorlick Decl. at ¶ 13.) Class Counsel's expert  
24 calculated the maximum total exposure by assuming a 100% violation rate. However, Class  
25 Counsel believes it would be very difficult to be awarded any damages for the rest break claim  
26 given that Defendants' rest break policy was valid, rest breaks were implemented through a bell  
27 system, and rest breaks need not be recorded and can be waived by the employees. Class Counsel  
28 also believes many individualized issues would apply making certification of this claim difficult

1 to achieve. Thus Class Counsel believes the realistic exposure on this claim is \$0.

## 2 **Paystub Violations**

3 42. Plaintiff alleged that Defendants failed to provide Class Members with accurate,  
4 itemized wage statements in writing as required by California Labor Code § 226(a) because the  
5 wage statements failed to accurately account for unpaid wages and overtime due to off the clock  
6 work or list meal and rest premiums paid as described above. (Aleman Decl. at ¶ 10.) In essence,  
7 the paystub claim is derivative of the underlying wage and break claims. This claim applies to all  
8 Class Members equally given that the paystub violation derives from the alleged unpaid wages  
9 and meal and rest break claims which also apply to all Class Members equally due to Defendants'  
10 uniform practice and policies. As a direct and proximate cause of Defendants' violation of Labor  
11 Code § 226(a), Plaintiff alleged Class Members suffered injuries, including among other things  
12 confusion over whether they received all wages owed them. Pursuant to Labor Code §§ 226(a)  
13 and 226(e), employees are entitled to recover the greater of all actual damages or fifty dollars  
14 (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for  
15 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand  
16 dollars (\$4,000).

17 43. Defendants argued that Plaintiff's claim for further Labor Code § 226(e) penalties  
18 would depend in large part on their underlying off-the-clock and meal and rest period claims, and  
19 thus be subject to the same defenses. Additionally, Defendants argued this claim has little or no  
20 value. *See e.g., Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019),  
21 (affirmed in part, reversed in part, and remanded by *Naranjo v. Spectrum Security Services, Inc.*,  
22 13 Cal.5th 93 (2022) ((although the case was reversed by the California Supreme Court, at the  
23 time of mediation this decision by the California Court of Appeal created uncertainty regarding  
24 these claims; it held that meal/rest premiums did not trigger section 203 waiting time penalties;  
25 similar analysis applied in rejecting a derivative claim for paystub penalties); *see also Maldonado*  
26 *v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements that  
27 accurately report wages paid to employees do not violate Labor Code § 226, even if it is later  
28 determined that employer did not properly pay all wages due). Defendants further contended that

1 meal break violations, even if established, could not be the predicate for a Labor Code § 226  
2 wage statement claims. *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184,  
3 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage  
4 statement need only document compensation actually received and the hours used to calculate  
5 that compensation). Defendants further contended that Labor Code § 226(e) penalties are not  
6 automatic. Rather, the employee must show (1) that he or she “suffered injury” from the  
7 employer’s failure to provide compliant wage statements, *see Elliot v. Spherion Pacific Work,*  
8 *LLC* (2008) 572 F.Supp.2d 1169, 1181 (applying California law) (holding employee was not  
9 entitled to penalties because no injury was shown), and (2) Defendants’ noncompliance was  
10 “knowing and intentional.” Finally, because the damages for this cause of action are penalties, the  
11 statute of limitations only runs from one year prior to the filing of the original complaint. *See Cal.*  
12 *Civ. Pro. § 340.*

13 44. Class Counsel’s expert estimated Defendants’ maximum total exposure on the section  
14 226 claim at approximately \$1,238,450 (\$50/\$100 x 12,716 number of paystubs from May 4,  
15 2019 to November 19, 2020; based on 663 employees in applicable statute of limitations for this  
16 claim). (Gorlick Decl. at ¶ 14.) Class Counsel believes it may be difficult to prevail on this claim  
17 because Class Members would need to show that they suffered an injury and that Defendants’  
18 noncompliance was knowing and intentional (on top of the challenges described above with the  
19 underlying wage and break claims).

#### 20 **Failure to Pay Final Wages**

21 45. In failing to pay the California Class Members their minimum wages, overtime wages,  
22 and premium pay for deficiently provided meal periods and rest breaks, all discussed above,  
23 Defendants willfully failed to pay these the California Class Members all wages due and certain  
24 at the time of termination or within seventy-two (72) hours of resignation, as required under  
25 Labor Code § 203. (Aleman Decl. at ¶ 11.) Plaintiff’s claim for waiting time penalties applies to  
26 all Class Members equally given that the failure to timely pay final wages derive from the unpaid  
27 wages and break claims which also apply to all Class Members equally due to Defendants’  
28 uniform practice and policies.

1       46.   Labor Code § 203 provides that if an employer willfully fails to pay an employee all  
2 wages due at termination or within 72 hours of resignation, then that employee's wages shall  
3 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.  
4 Because Class Members stopped working for Defendants but again were not paid their full  
5 compensation for the reasons discussed above, Class Members did not receive all wages due upon  
6 termination of employment.

7       47.   Defendants argued that, under Labor Code § 203, employers are only obligated to pay  
8 waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of  
9 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

10           A willful failure to pay wages within the meaning of Labor Code Section 203  
11 occurs when an employer intentionally fails to pay wages to an employee when  
12 those wages are due. However, a good faith dispute that any wages are due will  
preclude imposition of waiting time penalties under Section 203.

13           A "good faith dispute" that any wages are due occurs when an employer presents  
14 a defense, based in law or fact, which, if successful, would preclude any recovery  
15 on the part of the employee. The fact that a defense is ultimately unsuccessful will  
16 not preclude a finding that a good faith dispute did exist. Defenses presented  
which, under all the circumstances, are unsupported by any evidence, are  
unreasonable, or are presented in bad faith, will preclude a finding of a "good  
faith dispute."

17 Defendants maintained that because they had viable defenses in both law and fact, that waiting-  
18 time penalties could not be awarded and, in any case, such penalties were subject to a three-year  
19 limitations period under Labor Code § 203(b). Defendants also argued that there is no liability  
20 under Labor Code § 203 for violations of meal and rest break claims alone. *Ling v. P.F. Chang's*  
21 *China Bistro* (2016) 245 Cal.App.4<sup>th</sup> 1242; *Kirby v. Immoos Fire Protection, Inc.* (2016) 53  
22 Cal.4<sup>th</sup> 1244.

23       48.   Class Counsel's expert estimated Defendants' maximum total exposure on the section  
24 203 claim at approximately \$3,759,908 (1,177 terminated employees from May 4, 2017 to  
25 November 19, 2020 x 30 days x \$11.54 average rate of pay x 8.8 hours in a work day). (Gorlick  
26 Decl. at ¶ 15). Class Counsel believes it may be difficult to be awarded waiting time penalties  
27 given that Plaintiff would need to show willfulness on top of proving the underlying wage and  
28 break claims.

**PAGA Penalties**

49. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows Plaintiff to obtain civil penalties on behalf of herself and other Class Members for Defendants' violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the affected employees. The limitations period as for all penalties is one year prior to the filing of the complaint.

50. The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§ 203, 204, 226(a), 226.2, 226.7, 510, and 1194, Defendants asserted that if PAGA penalties were mandatory, an employer's PAGA liability would be huge because of the possibility of collecting multiple civil penalties for a single violation, and thus such penalties would almost always dwarf the damages available under the causes of action proper. However, PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018), (recognizing court's ability to reduce PAGA penalties). Courts have held that situations similar to the current one (e.g. injuryless violations, technical errors, and substantial compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was justified when employer "attempted to comply with the law"); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at \*8-9 (C.D. Cal. August 12, 2011) (reducing PAGA

1 penalties more than 80% – from \$2.8 million to \$500,000 – when “employees suffered no injury”  
2 employers were “not aware” of the violation and “took prompt steps to correct all violations once  
3 notified”). Defendants here maintained that it had a strong argument that it would be unjust to  
4 award maximum PAGA penalties.

5 51. Furthermore, PAGA penalties are also derivative of each and every other claim, and  
6 Defendants therefore argued the PAGA claims would be subject to the same defenses to the  
7 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be  
8 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for  
9 initial violations under the applicable statutes, because Defendants had never been notified of the  
10 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to  
11 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.  
12 4th 1157, 1211-12. Therefore if Labor Commissioner - on whose behalf Plaintiff is prosecuting  
13 this action for civil penalties - would not impose civil penalties in a case like this, the Court may  
14 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203  
15 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court’s reduction of PAGA civil  
16 penalties by 30 percent, finding that awarding the full penalties would have been “unjust” because  
17 “...a court may award a lesser amount than the maximum civil penalty amount specified by this  
18 part if, based on the facts and circumstances of the particular case, to do otherwise would result in  
19 an award that is unjust, arbitrary and oppressive, or confiscatory.”

20 52. Class Counsel’s expert estimated Defendants’ maximum total exposure on the PAGA  
21 claim at approximately \$1,271,600 (\$100 x 12,716 number of paystubs from May 4, 2019 to  
22 November 19, 2020). (Gorlick Decl. at ¶ 16.) However, Class Counsel notes that owing to the  
23 discretionary nature of PAGA penalties and the foregoing case law it is unlikely the Court would  
24 award the full penalty and that it would be substantially reduced. Class Counsel applied discounts  
25 in light of the countervailing arguments with regard to the other causes of action, and moreover  
26 the Court’s power to award “a lesser amount than the maximum civil liability.” The parties also  
27 considered that the purpose of PAGA is to “achieve maximum compliance with state labor  
28 laws,”. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the

1 settlement's contemplated PAGA payment of \$30,000 appropriate.

### 2 **Unfair Business Practices**

3 53. Plaintiff pled this cause of action in order to augment their other causes of action and  
4 aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations  
5 on Plaintiff' wage claims, which qualify as unfair business practices, to four years rather than the  
6 three years provided by statute.

### 7 **Summary**

8 54. The foregoing discussion has sought to explain how the settlement amount is adequate  
9 in light of the merits of Plaintiff' case. It has done this by explaining the legal basis for each of  
10 Plaintiff' causes of action, summarizing the evidence that Class Counsel gathered in support of  
11 those causes of action, and relating Defendants' legal and factual arguments that worked to  
12 derogate from the strength of Plaintiff' case. Based on the foregoing Class Counsel estimates the  
13 realistic exposure on all the claims at \$6,802,208 exclusive of the discretionary penalties under  
14 PAGA.

15 55. Class Counsel had to apply appropriate discounts in light of the facts and law as  
16 discussed above. Thus, this settlement, like most others, was the product of compromise. Because  
17 of these and other risks, a recovery of \$900,000.00 under the Settlement Agreement is an  
18 excellent result. Under the Settlement, each of the approximately 1,672 Class Members will  
19 receive on average, assuming they worked throughout the class period, \$323 after expenses.

### 20 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**

### 21 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**

### 22 **STATUS THROUGH TRIAL**

23 56. The next *Clark/Kullar* factors recognize that settlements take into consideration the  
24 risks and expenses posed by further litigation and, in the class-action context, the risk of non-  
25 certification. Consequently, it is proper that trial courts should keep these considerations in mind  
26 when judging the adequacy of class action settlements.

27 57. Further litigation of this case posed real risks for a number of reasons. First, there were  
28 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in

1 the previous section. In that section, it was observed that almost every cause of action was subject  
2 to some unique indeterminacy of its own, and that the derivative causes of action were thus  
3 subject to a double indeterminacy, both their own and those of the causes of action on which they  
4 were based.

5 58. The parties disputed the effect of these and other issues on class certification and  
6 decertification. Class Counsel maintained that there were several legal and factual questions at  
7 issue in the case that could best be decided on a class wide basis. Class Counsel contended that  
8 the same policies and practices applied to all Class Members and therefore common questions  
9 obtained and were likely to predominate over individual inquiries. Defendants disputed these  
10 contentions and insisted that the *Brinker* decision called into question the certifiability of cases  
11 such as this one. Defendants also argued that its policies were compliant with the law, while  
12 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would  
13 give rise to common questions amenable to certification. Thus the parties had set positions on the  
14 propriety of certifiability and liability that did not admit of an easy resolution.

15 59. Finally, it is always preferable to reach a relatively early resolution of a dispute  
16 because, in addition to what has already been said, such resolutions save time and money that  
17 would otherwise go to litigation. In light of the risk and expense of the lawsuit proceeding to trial  
18 there was a need to resolve this matter soon than later. Most cases settle sooner or later. If this  
19 case settled after further litigation, the settlement amount would have taken into account the  
20 additional costs incurred, and there might have been less available for Class Members after all  
21 was said and done. This is not just an abstract contention. The parties were moving into the phase  
22 of this litigation where they would have had to depose a number of people such as managers,  
23 supervisors, and employees in order to establish liability for trial. Discovery disputes would have  
24 been in the offing. The parties were also aware that a class action trial would be a complicated  
25 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.  
26 In contrast, the settlement provides real benefits for Class Members in the immediate future. The  
27 benefits are not insignificant for anyone, especially given the current economic climate.  
28 Consequently, the risk and expense of further litigation outweighed any benefit that might have

1 been gained otherwise.

2 **NOTICE TO AND REACTION OF CLASS MEMBERS**  
3 **TO THE PROPOSED SETTLEMENT**

4 60. It is premature to address this factor now, at the preliminary approval stage; however,  
5 some observations are in order. First, the notification procedure set out in the Settlement  
6 Agreement provides the greatest likelihood that each and every Class Member will receive the  
7 Notice of Class Action Settlement, Opt-out Form, and Objection Form (“Notice Packet”),  
8 attached to the Settlement Agreement as Exhibits A, B, and C. Under the Settlement Agreement,  
9 the Settlement Administrator will send the Notice Packet to each Class Member via First Class  
10 U.S. mail. (Exh. 1, §41). Before mailing, the Settlement Administrator will perform a search  
11 based on the National Change of Address Database for information to update and correct for any  
12 known or identifiable address changes. (Exh. 1, §42) If the Notice Packet is returned as non-  
13 deliverable on or before the Response Deadline and a new address is obtained by way of a  
14 returned Notice Packet, then the Settlement Administrator will promptly forward the original  
15 Notice Packet to the updated address via first-class regular U.S. mail, indicating on the original  
16 packet the date of such re-mailing. (Exh. 1, §42) Thus, most, if not all, Class Members will likely  
17 receive the Notice Packet.

18 61. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the  
19 claims involved, the terms of the settlement, and their options thereunder. They provide for a  
20 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement.  
21 The efforts taken to ensure that Class Members receive the Notice Packet and are well informed  
22 about the settlement augur a favorable response rate.

23 62. All Class Members will benefit because Defendants who has been sued is generally  
24 more likely to comply with the law in the future. If a Class Member disputes the number of  
25 workweeks stated for that Class Member in the Class Notice, the Class Member must ask the  
26 Settlement Administrator to resolve the matter by submitting in writing under penalty of perjury  
27 the workweeks that the Class Member claims to have actually worked for Defendants during the  
28 Class Period. (Exh. 1, §44). Defendants’ records shall have a rebuttable presumption of

1 correctness. After consultation with Class Counsel and Defendants' Counsel, the Class Action  
2 Administrator will make a determination of the Class Member's total workweeks during the  
3 applicable period. *Id.*

#### 4 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

5 63. The foregoing discussion establishes the fairness of the class-action settlement in the  
6 instant case. It has done this by analyzing the settlement in light of the appellate decisions in  
7 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and  
8 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour  
9 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.  
10 Defendants have agreed to pay fair value to settle Plaintiff's claims given the existence of legal  
11 uncertainty, particularly with regard to Plaintiff's claim for failure to provide proper meal periods.  
12 From Class Counsel's substantial experience with wage-and-hour class action lawsuits Class  
13 Counsel believe that this case could not have settled on better terms under the circumstances.  
14 Request therefore is made that the settlement be granted preliminary approval so that those  
15 persons whom it was intended to benefit shall be afforded the opportunity to determine its  
16 adequacy.

#### 17 **REQUEST FOR ATTORNEYS' FEES**

18 64. Under the Settlement, Class Counsel also requests, without opposition from  
19 Defendants, an award of Attorneys Fees and Costs consisting of: (1) no more than Three Hundred  
20 Thousand Dollars and Zero Cents (\$300,000.00) in Attorneys' Fees and (2) Seventeen Thousand  
21 Dollars and Zero Cents (\$17,000.00) for reimbursement of Class Counsel's costs. (Exh. 1, §33.)  
22 This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial  
23 work they have put into this case and, moreover, the risk they assumed by taking it in the first  
24 place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated  
25 work that they have already done and for all the work they will continue to do in carrying out and  
26 overseeing the notification to Class Members, communicating with Class Members regarding  
27 their claims, and assisting in the administration of the settlement if it is preliminarily approved.

28 65. My firm took this case on a contingent-fee basis against a business represented by a

1 reputable defense firm. When we take contingent cases, we must pay careful attention to the  
2 economics involved or one bad case can destroy years of work. Accordingly, when we take  
3 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal  
4 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the  
5 number of hours in a day is limited. Because of this, when we take on one particular matter, we  
6 are unable to take on other matters. When Class Counsel became involved in this case, we  
7 realized the time commitment that it would entail and we were forced to turn down matters that  
8 we otherwise should have been able to handle. In sum, this case claimed a significant portion of  
9 Class Counsel's time and attention throughout its pendency.

10 66. The requested fee (of 1/3 the Gross Settlement Amount) is reasonable for the services  
11 provided to Class Members and for the benefits they are to receive. The California Supreme  
12 Court has held that "when class action litigation establishes a monetary fund for the benefit of the  
13 class members, and the trial court in its equitable powers awards class counsel a fee out of that  
14 fund, the court may determine the amount of a reasonable fee by choosing an appropriate  
15 percentage of the fund created." *Laffitte v. Robert Half Intern. Inc.* (Aug. 11, 2016) 205  
16 Cal.Rptr.3d 555, 573. Indeed, courts may use the "percentage method for its primary calculation  
17 of the fee award. The choice of a fee calculation method is generally one within the discretion of  
18 the trial court, the goal under either the percentage or lodestar approach being the award of a  
19 reasonable fee to compensate counsel for their efforts." *Id.* An award of attorneys' fees equivalent  
20 to one-third of the common fund is commensurate with judicial precedent. *Laffitte v. Robert Half*  
21 *Intern. Inc.* (Aug. 11, 2016) 205 Cal.Rptr.3d 555 (confirming award of 1/3 the common fund as  
22 reasonable). It should also be noted that the California Supreme Court, even after observing that  
23 the Ninth Circuit had approved a federal benchmark of 25% for such percentage awards, refused  
24 to adopt it, or disturb the lower court's award of one-third of the common fund. *Id.* at 566.

### 25 **The Lodestar Method**

26 67. Class Counsel's lodestar calculation supports the requested attorneys' fees. To date I  
27 have spent approximately 85 hours in the prosecution of this matter. See **Exhibit 5** attached  
28 hereto (Yeremian Time and Task Summary). My associate Natalie Haritounian has spent

approximately 135 hours to date on this matter. Declaration of Natalie Haritonian, ¶ 12 and **Exhibit 1** thereto. The lodestar calculation typically proceeds in three steps. First, a trial court must determine a baseline guide or “lodestar” figure based on the time spent and reasonable hourly compensation for each attorney involved in the case. *Serrano v. Priest* (1975) 20 Cal.3d 25, 48. The court then sets a reasonable hourly fee to apply to the time expended, with reference to the prevailing rates in the geographical area in which the action is pending. *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997. Finally, a “multiplier” is selected with reference to the following factors: (1) the novelty and difficulty of issues involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, and (4) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award. *Serrano, supra*, 20 Cal.App.3d at 49.

68. Class Counsel charges rates commensurate with the prevailing market rates for attorneys of comparable experience and skill handling complex litigation. The hourly rates for individual lawyers who worked on this matter are:

| ATTORNEY           | RATE  | HOURS | LODESTAR  |
|--------------------|-------|-------|-----------|
| David Yeremian     | \$750 | 85    | \$63,750  |
| Natalie Haritonian | \$500 | 135   | \$67,500  |
| <b>TOTAL</b>       |       |       | \$131,250 |

Aside from being warranted by our skill, experience and ability, Class Counsel rates that were used in application of the lodestar cross check in this case, are supported by the Laffey Matrix attached hereto as **Exhibit 6**. According to the Laffey Matrix, Class Counsel rates are less than or in line with the prevailing market rates (David Yeremian \$750 v. \$829 (19 years), Natalie Haritonian \$500 v. \$508 (5 years)).

69. As for the *Serrano* factors, all militate in favor of the requested fee award. This case raised a number of complex and contested issues, and Class Counsel exhibited skill and creativity in prosecuting and presenting them.

1       70.    Class Counsel had to spend time researching and analyzing each of these claims and  
2 issues in order to adequately assess the liability of Defendants. Class Counsel then had to develop  
3 the evidence necessary through discovery to establish Defendants' liability. This was done  
4 through carefully analyzing hundreds of pages of documents.

5       71.    In sum, Class Counsel had to come up with creative approaches to these issues in  
6 litigating the case and, ultimately, negotiating and crafting the settlement. To this end, Class  
7 Counsel has devoted a tremendous amount of time and energy. As shown in the table above,  
8 Class Counsel have spent a substantial number of hours working on this case. This time  
9 commitment was necessary in order to research, construct and prosecute viable legal claims in the  
10 face of stiff opposition, but it has come at a cost. In particular, the time Class Counsel have  
11 devoted to this case has prevented them from taking on many other cases, including hourly work  
12 for which compensation for work done would have been more certain. They have also had to  
13 forgo a number of other potential employment matters that might have settled during the  
14 pendency of this litigation and yielded significant attorneys' fees. Despite these considerations  
15 Class Counsel zealously represented Plaintiffs and the class and have obtained a favorable result.

16       72.    Such is not always the case. Indeed Class Counsel has invested time and money into  
17 numerous other cases, including class actions, that have fizzled for one reason or another, leaving  
18 Class Counsel completely without any compensation for their effort. Here Class Counsel has  
19 achieved a beneficial settlement for the class, but this was by no means a foregone conclusion;  
20 indeed their efforts might well have been frustrated by any number of obstacles with which they  
21 were presented along the way. Nor could class certification be guaranteed. In addition,  
22 Defendants could have exerted pressure on Plaintiffs to dismiss their claims by offering them an  
23 individual settlement, an experience with which Class Counsel are not unfamiliar. However,  
24 Class Counsel was able to navigate the shoals of unpredictability to achieve a desirable result, and  
25 they have done so without receiving any compensation to speak of thus far because they took this  
26 case on a contingency-fee basis.

27       73.    From the foregoing analysis, Class Counsel's requested attorneys' fees are fair and  
28 reasonable. Class Counsel conservatively estimate that they have invested over 220 hours of

1 attorney time to date on this matter. My billing rate is \$750.00 per hour (19 years out of law  
2 school and is less than the Laffey Matrix rate of \$829.00), and I spent 85 hours on this matter. See  
3 **Exhibit 5 & 6** (Yeremian Time Summary and Laffey Matrix). Natalie Haritoonian's billing rate  
4 is \$500.00 (5 years out of law school, Laffey Matrix rate of \$508.00), and she spent 135 hours on  
5 this matter to date. (Haritoonian Decl. at ¶ 11.) The lodestar for Plaintiffs' counsel is \$131,250 to  
6 date (\$63,750 for my time on the case and \$67,500 for Natalie Haritoonian's time). Class Counsel  
7 estimates expending collectively at least another 30-35 hours on this matter dealing with  
8 administration, Class Member contacts, questions, opt outs, etc., drafting the final approval  
9 motion and attending the hearing and post judgment issues. Class Multipliers routinely range  
10 from 3 to 5, and it is not uncommon that multipliers of between 5 and 10, or higher, are applied.  
11 See, e.g., *Wilson v. Bank of Am. Natl. Trust & Savs. Assn.*, No. 643872 (Cal. Sup. Ct., Aug. 16,  
12 1982) (multiplier of 10); *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456,  
13 465 (affirming multiplier of 12, and expressly rejecting argument that fee was either exorbitant or  
14 unconscionable). The fee request of \$300,000 results in a current multiplier of approximately 2.29  
15 which further evidences the reasonableness of the request. This multiplier will decrease as Class  
16 Counsel bills additional time to this matter for administration and final approval.

17 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

18 74. Plaintiff herein is entitled to reasonable service payment for her efforts and initiative in  
19 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better  
20 apprising herself of her rights, deciding whether remedial action should be taken, how it should  
21 be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours  
22 with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only  
23 her own rights but also those of their co-workers by filing a class action lawsuit.

24 75. The courage it took to stand up to Defendants by filing and litigating this action in this  
25 way should not be underestimated. By suing Defendant, Plaintiff increased her risk of retaliation  
26 by prospective employers. Plaintiff's lawsuit has now required Defendants to expend  
27 considerable resources, and Plaintiff justifiably fears the fact that she served as class  
28 representative in a wage and hour class action will not be lost on a prospective employer who has

1 to choose between an applicant who has never sued a prior employer and one who has. Plaintiff  
2 contends this risk is particularly real in the information age, where employers can, more easily  
3 than ever, perform background checks of prospective employees, sometimes with the stroke of a  
4 key. It is common for employers to screen employee candidates to determine whether they have  
5 ever filed suit, and employee candidates who might be branded “litigious” are likely to be  
6 screened out of the process. In fact, an entire industry has developed for providing employers  
7 with background information on employee candidates.

8 76. But Plaintiff did not allow her fear of the potential repercussions of being class  
9 representative to deter her from acting for the benefit of Class Members. To the contrary, Plaintiff  
10 has been intimately involved in this case since its inception. She has devoted a substantial amount  
11 of time to helping Class Counsel effectively develop and prosecute this action at every stage of  
12 the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class  
13 Counsel on numerous occasions to discuss every aspect of their case. Plaintiff provided Class  
14 Counsel with information about Defendants and about the industry generally, reviewed  
15 documents, identified witnesses, consulted Class Counsel throughout the litigation repeatedly and  
16 at length, participated in the mediation process, monitored the progress of the litigation with Class  
17 Counsel, and reviewed and signed the Settlement Agreement.

18 77. Plaintiff has spent a significant amount of time with Class Counsel detailing her  
19 knowledge of Defendants’ practices and helping Class Counsel with the prosecution of this  
20 action. She has diligently, adequately, and fairly represented Class Members, and has not placed  
21 her interests above any member of the putative class. The payment to Plaintiff is intended to  
22 recognize her time and effort on behalf of the Class. The amount requested is fair and appropriate  
23 based on her contribution and involvement. For example, Plaintiff instigated the lawsuit by  
24 bringing these violations to the attention of Class Counsel. She spent several hours answering  
25 questions and providing information to Class Counsel throughout the pendency of this action. She  
26 identified witnesses, explained to Class Counsel day to day business practices of Defendants with  
27 regard to work schedules and meal breaks, etc. The parties are in agreement that Plaintiff is  
28 entitled to an enhancement for her time and effort in this matter. This sort of payment to a class

1 representative has been a common feature of settlements negotiated by Class Counsel and has  
2 been routinely approved by trial courts.

3 78. In light of the foregoing, Class Counsel believes that the Class Representative  
4 Enhancement payment in the amount of Five Thousand Five Hundred Dollars and Zero Cents  
5 (\$5,000.00) is fair and reasonable. This amount is a far cry from the \$50,000 of enhancement  
6 awards to the two named plaintiff approved by the trial court in *Clark*. See *Clark, supra*, 175  
7 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to ensure that  
8 class representative are not overcompensated at the expense of the class, modest incentive awards  
9 in employment class actions, such as the one here, are necessary not only to compensate class  
10 representative for the time they spend in the case, but also, and more importantly, to encourage  
11 aggrieved employees to challenge questionable employment practices notwithstanding the very  
12 real consequences they may face.

13 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

14 79. The proposed Classes satisfy the criteria for certification of a settlement class under  
15 California law, as embodied in California Code of Civil Procedure § 382. Defendants have agreed  
16 to the certification of the class for settlement purposes. In general, courts may take a proposed  
17 settlement into account in evaluating the propriety of class certification. See *Dunk v. Ford Motor*  
18 *Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in  
19 certifying classes for settlement purposes. *Ibid.* Therefore the Court should take into  
20 consideration the fact that the parties have settled their claims and stipulated to certification for  
21 settlement purposes when assessing typicality and adequacy.

22 a. Numerosity. The putative classes are so numerous that joinder of all members is  
23 impractical. Class Members are “all current and former non-exempt packing employees who  
24 worked for Defendants in California at any time between May 4, 2016 and January 19, 2021.”  
25 There are approximately 1,672 persons answering to this definition. Thus, there are a sufficient  
26 number of Class Members to warrant certifying this as a class action for settlement purposes.

27 b. Ascertainability. The putative classes are defined in a manner that is precise,  
28 objective, and ascertainable. The Class Members have already been identified by reference to

1 Defendants' payroll and personnel records.

2 c. Typicality. A class representative's claims are typical when they arise from the  
3 same event, practice, or course of conduct that gives rise to the claims of other putative class  
4 members, and if their claims rest on the same legal theories. The class representative's claims  
5 must be "typical" but not necessarily identical to the claims of other class members. It is  
6 sufficient that the representative is similarly situated so that he or she will have the motive to  
7 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*  
8 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been  
9 the law in California that the class representative must have identical interests with the class  
10 members."). Thus, it is not necessary that the class representative should have personally incurred  
11 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*  
12 (2001) 91 Cal.App.4th 224, 228.

13 Plaintiff's claims are typical of Class Members' claims because Plaintiff and Class  
14 Members had the same basic job description and were subject to the same policies, practices and  
15 working conditions that led to the violations described herein. Aleman Decl. ¶¶ 2-3. They arose  
16 from the same factual basis and are based on the same legal theories. Plaintiff was employed by  
17 Defendants during the Class Period subject to the meal and rest break policies and pay practices  
18 at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central issues of this  
19 litigation (whether Defendants failed to pay all wages, whether Defendants failed to provide meal  
20 and rest periods etc.), which would arise if this were an individual action brought by Plaintiff,  
21 apply to the other Class Members as well, and the answer to these questions would determine  
22 Defendants' liability to the entire putative class. Thus, Plaintiff's claims are typical of the claims  
23 of the putative class. Accordingly, the typicality requirement is satisfied. Aleman Decl. ¶¶ 4-12.

24 d. Adequacy. A class representative must possess the same interest and suffer the  
25 same injury as the class members. "To assure 'adequate' representation, the class representative's  
26 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*  
27 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,  
28 the adequacy requirement is satisfied when the class representative's interests are not antagonistic

1 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

2 Plaintiff does not have any conflicts with the class and in fact her interests are aligned  
3 with those of the class. Aleman Decl. ¶¶ 13-15. Because Plaintiff's claims are identical to those  
4 that would be asserted by the unnamed Class Members were they before the Court, Plaintiff has  
5 every interest in zealously representing the unnamed class members. Plaintiff has not shrunk from  
6 this responsibility. Indeed, Plaintiff has devoted a substantial amount of time and energy to  
7 litigating this action and effecting a settlement. Furthermore, as detailed above, Class Counsel are  
8 experienced in wage-and-hour litigation, especially class actions, and have zealously represented  
9 the interests of the class in litigating this case. *See infra* ¶¶ 4-10. Accordingly, the adequacy  
10 requirement is satisfied.

11 e. Commonality. Common questions of law or fact in this case predominate over  
12 individual questions. This action involves, *inter alia*, a determination about Defendants' alleged  
13 failure to pay all wages due on account of the common practice of having employees wait in lines  
14 to clock in (and to clock out and wait for paychecks), and failure to provide meal and rest periods  
15 pursuant to a common written policy and practice implemented through a bell system. The  
16 derivative claims of failure to pay final wages when required, failure to provide accurate wage  
17 statements, and PAGA all stem from these underlying common practices and policies. Plaintiff  
18 contends these practices that affected class members in the same way. All Class Members were  
19 employed during the Class Period and all had the same job description as Plaintiff as packing  
20 employees. *See infra*, ¶¶ 27-55. Therefore, the operative complaint delineates a common course  
21 of conduct applicable to all Class Members. Therefore, based on Class Counsel's investigation,  
22 the review of the discovery produced by Defendants, and their discussions with Plaintiff, Plaintiff  
23 contends the evidence supports their position that the employment practices and policies of  
24 Defendants' business were consistent and uniform.

25 f. Predominance. Individualized issues do not predominate over the issues of law and  
26 fact that are common to the class as a whole. The principal issues of controversy are whether  
27 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,  
28 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were

1 subjected to the same policies and pay practices during the relevant time period. Plaintiff and  
2 Class Members seek meal and rest break premiums, unpaid wages and overtime, and penalties for  
3 work performed as non-exempt employees for Defendants. These issues are suitable for common  
4 adjudication because all Class Members were subject to the same employment policies and  
5 Plaintiff contends the practices applied uniformly to all Class Members. To the extent that Class  
6 Members may have been affected by these policies to differing extents is not a factor weighing  
7 against certification but rather is an issue to be dealt with during the damages phase of trial. *See,*  
8 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 334 (2004) (it is not a bar to  
9 certification that individual class members may ultimately need to itemize their damages.)

10 g. Superiority. Class resolution is superior to other available methods for the fair and  
11 efficient adjudication of the controversy. There is little interest or incentive for Class Members to  
12 individually control the prosecution of separate actions. Although the injury resulting from  
13 Defendants' policies and practices are real and significant, the cost of individually litigating each  
14 such case against Defendants would easily exceed the value of any relief that could be obtained  
15 by any one Class Member individually. If Class Members are forced to litigate their claims  
16 individually this would result in about 1,672 individual actions against Defendants. Here, the  
17 alternative methods of resolution are individual suits for relatively small amounts. Hence, an  
18 individual suit would prove uneconomical for potential plaintiff because litigation costs would  
19 dwarf a potential recovery.

20 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other  
21 actions by Class Members against Defendants asserting similar claims as here. Furthermore,  
22 Fresno County is a compelling forum for this action given that Defendants' location is in Fresno  
23 County and numerous Class Members work in this County.

24 i. There are no serious manageability difficulties presented by preliminarily  
25 approving the case for settlement purposes. As this case will not go to trial if finally approved, all  
26 that would remain is settlement administration and responding to possible objectors.

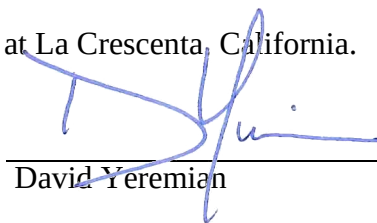
27 80. On November 17, 2022, Plaintiff uploaded the Joint Stipulation of Class Action  
28 Settlement and the Memorandum of Points and Authorities in Support of Plaintiff's Motion for an

1 Order Preliminarily Approving the Class Action Settlement, Approving Notice of Class Action  
2 Settlement, and Setting Hearing for Final Approval. A true and correct copy of the confirmatory  
3 email from the LWDA is attached hereto as **Exhibit 7**.

4 81. Pursuant to the Settlement, the parties have agreed that any amounts that remain  
5 uncashed and otherwise unclaimed shall be tendered to the Valley Children's Hospital. I am not  
6 aware of any relationship between the Valley Children's Hospital and (A) any class representative  
7 or other party, (B) any officer, director, or manager of any party, or (C) any attorney or law firm  
8 for any party.

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

11 Executed this 17<sup>th</sup> day of November, at La Crescenta, California.

12   
13 \_\_\_\_\_  
14 David Yerman  
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# EXHIBIT 1

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF FRESNO**

VIDALI ALEMAN, an individual on behalf of  
herself and others similarly situated,

Plaintiff,

vs.

MOONLIGHT PACKING CORPORATION,  
a California corporation; MOONLIGHT  
PACKING COMPANY, LLC, a California  
limited liability company; and DOES 1  
through 50, inclusive,

Defendants.

Case No.: 20CECG01196

**CLASS ACTION**

Assigned for All Purposes To:  
Hon. Judge Kristi Culver Kapetan  
Dept.: CX104

**JOINT STIPULATION OF CLASS ACTION  
SETTLEMENT**

|                          |                 |
|--------------------------|-----------------|
| Complaint Filed:         | May 4, 2020     |
| First Amended Complaint: | June 10, 2020   |
| Trial Date:              | January 3, 2022 |

1 This Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement  
2 Agreement”) is made and entered into by and between Plaintiff VIDALI ALEMAN (“Plaintiff” or  
3 “Class Representative”), on behalf of herself and all others similarly situated, and Defendants  
4 MOONLIGHT PACKING CORPORATION and MOONLIGHT PACKING COMPANY, LLC,  
5 (collectively “Defendants”) (collectively with Plaintiff, the “Parties”).

## 6 DEFINITIONS

7 The following definitions are applicable to this Settlement Agreement.

8 Definitions contained elsewhere in this Settlement Agreement will also be effective:

- 9 1. “Action” means *Vidali Aleman, et al. v. Moonlight Packing Corporation, et al.*,  
10 Fresno County Superior Court, Case No. 20CECG01196.
- 11 2. “Aggrieved Employees” means all current and former non-exempt employees  
12 who worked for Defendants in California at a time during the PAGA limitations which is at any  
13 time between April 6, 2019 and January 19, 2021.
- 14 3. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the  
15 Court for Class Counsel’s litigation and resolution of this Action.
- 16 4. “Class Counsel” means David Yeremian & Associates, Inc.
- 17 5. “Class List” means a complete list of all Class Members that Defendants will  
18 diligently and in good faith compile from its records and provide to the Settlement  
19 Administrator within ten (10) days after Preliminary Approval of this Settlement. The Class  
20 List will be formatted in Microsoft Office Excel and will include the following information  
21 from Defendants’ records: each Class Member’s full name; last-known mailing address; Social  
22 Security number; and dates of employment as a non-exempt employee in California during the  
23 Class Period.
- 24 6. “Class Member(s)” or “Settlement Class” means all current and former non-  
25 exempt packing employees who worked for Defendants in California at any time between May  
26 4, 2016 and January 19, 2021. “Class Members” shall not include any person who submits a  
27 timely and valid request for exclusion.
- 28 7. “Class Period” means the period from May 4, 2016 to January 19, 2021.

1           8.       “Class Representative Enhancement Payment” means the amount approved by  
2 the Court to be paid to Plaintiff in recognition of her contributions to the Action on behalf of  
3 Class Members and Aggrieved Employees.

4           9.       “Court” means the Superior Court of California, County of Fresno.

5           10.      “Defendants” means MOONLIGHT PACKING CORPORATION and  
6 MOONLIGHT PACKING COMPANY, LLC.

7           11.      “Effective Date” means: (a) the date of entry of the Court’s order granting final  
8 approval of the Settlement Agreement and Judgment, if no objections have been filed or if an  
9 objection was filed and later withdrawn; or (b) if an objection to the Settlement Agreement is  
10 filed, then the date when the time expires to file an appeal of the Court’s grant of Final  
11 Approval of the Settlement Agreement; or (c) if an objection is filed, as well as a timely Notice  
12 of Appeal of the Court’s grant of Final Approval of the Settlement Agreement, then the date the  
13 appeal is finally resolved, with the final approval unaffected.

14          12.      “Individual Settlement Payment” means each Class Member’s share of the Net  
15 Settlement Amount.

16          13.      “Gross Settlement Amount” is the amount of Nine Hundred Thousand Dollars  
17 and Zero Cents (\$900,000.00), which is the maximum amount to be paid by Defendants  
18 pursuant to this Settlement Agreement. The Gross Settlement Amount includes all Individual  
19 Settlement Payments to Class Members, the Class Representative Enhancement Payment to  
20 Plaintiff, Attorneys’ Fees and Costs to Class Counsel, the Settlement Administration Costs to  
21 the Settlement Administrator and the PAGA Payment as specified in this Agreement.  
22 Defendants shall pay the employer’s share of payroll taxes due on the portion of Settlement  
23 Payments allocated to wages separately and in addition to the Gross Settlement Amount. The  
24 Parties agree that Defendants will have no obligation to pay any amount in connection with this  
25 Settlement Agreement apart from the Gross Settlement Amount and the employer’s share of  
26 payroll taxes due on the portion of Settlement Payments allocated to wages, and that none of  
27 the Gross Settlement Amount will revert to Defendants.

28          14.      “Net Settlement Amount” means the Gross Settlement Amount, less the

1 Attorneys' Fees and Costs, Class Representative Enhancement Payments, Settlement  
2 Administration Costs, and seventy-five percent (75%) of the PAGA Payment as specified in  
3 this Agreement.

4 15. "Objection" means any written objection to this Settlement sent by a Class  
5 Member to the Settlement Administrator as specified herein and in the Notice of Settlement.  
6 An Objection to Settlement must be sent to the Settlement Administrator within the time  
7 limitations set forth in this Stipulation.

8 16. "Notice of Class Action Settlement" means the notice of settlement, attached as  
9 **Exhibit A**, to be mailed to all members of the Settlement Class upon Preliminary Approval.

10 17. "Notice Packet" means the Notice of Class Action Settlement attached as  
11 **Exhibit A**, the Objection Form attached as **Exhibit B**, and the Request for Exclusion Form  
12 attached as **Exhibit C** to be mailed to all members of the Settlement Class upon Preliminary  
13 Approval.

14 18. "PAGA" means the California Labor Code Private Attorneys General Act of  
15 2004.

16 19. "PAGA Payment" means the payment made hereunder to the California Labor  
17 and Workforce Development Agency and the Settlement Class Members for settlement of  
18 claims for civil penalties under PAGA.

19 20. "PAGA Period" means the period from April 6, 2019 to January 19, 2021.

20 21. "Parties" means Plaintiff and Defendants collectively.

21 22. "Plaintiff" means VIDALI ALEMAN.

22 23. "Preliminary Approval" means the Court order granting preliminary approval of  
23 the Settlement Agreement.

24 24. "Released Claims" means all causes of action and factual or legal theories that  
25 were alleged in the operative complaints or that could have been alleged against Defendants  
26 based on the facts contained in the operative complaints, including violations of California  
27 Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1185,  
28 1194, 1194.2, 1197, 1199, 2698, and 2699 *et seq.*, California Code of Regulations, Title 8,

1 section 11000 *et seq.*, and California Business & Professions Code §§ 17200 to 17208, and the  
2 applicable IWC Wage Orders from the following claims for relief: (a) failure to pay minimum,  
3 regular, or hourly wages, (b) failure to pay overtime wages or accurate overtime wages, (c)  
4 failure to pay reporting time pay, (d) failure to provide meal breaks and failure to pay premium  
5 pay for missed meal breaks, (e) failure to provide rest breaks and failure to pay premium pay  
6 for missed rest breaks, (f) failure to provide complete, accurate or properly formatted wage  
7 statements, (g) failure to timely pay wages during employment or upon separation, (h) failure to  
8 maintain accurate records, (i) unfair business practices that could have been premised on the  
9 claims, causes of action or legal theories of relief described above or any of the claims, causes  
10 of action or legal theories of relief pleaded in the operative complaint; (j) all claims under the  
11 California Labor Code Private Attorneys General Act of 2004 that could have been premised on  
12 the claims, causes of action or legal theories described above or any of the claims, causes of  
13 action or legal theories of relief pleaded in the operative complaint; (k) any other claims or  
14 penalties under the California Labor Code or other wage and hour laws pleaded in the Action;  
15 and (l) all damages, penalties, interest and other amounts recoverable under said claims, causes  
16 of action or legal theories of relief. The period of the Release shall extend to the limits of the  
17 Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release.  
18 Defendants shall be entitled to a release of Released Claims which occurred during the Class  
19 Period only during such time that the Settlement Class Member was classified as non-exempt,  
20 and expressly excluding all other claims for vested benefits, wrongful termination,  
21 unemployment insurance, disability, social security, workers' compensation, claims while  
22 classified as exempt, and claims outside of the Class Period.

23         25.       “Released Parties” means Defendants, and their past, present and/or future,  
24 direct and/or indirect officers, directors, shareholder, employees, agents principals, heirs,  
25 representatives, accountants, auditors, attorneys, consultants, insurers, and their respective  
26 successors; and predecessors in interest, assigns, subsidiaries, affiliates, and parents, if any.

27         26.       “Request for Exclusion” means a timely written request by a Class Member to  
28 be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,

1 address, telephone number and last four digits of the Social Security Number of the Class  
2 Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the  
3 Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included  
4 in the Settlement; and (v) be postmarked on or before the Response Deadline.

5 27. “Response Deadline” means the deadline by which Class Members must  
6 postmark to the Settlement Administrator Requests for Exclusion or Objections to the  
7 Settlement. The Response Deadline will be forty-five (45) calendar days from the initial  
8 mailing of the Notice of Class Action Settlement by the Settlement Administrator, unless the  
9 45<sup>th</sup> day falls on a Sunday or Federal holiday, in which case the Response Deadline will be  
10 extended to the next day on which the U.S. Postal Service is open.

11 28. “Settlement Administrator” means CPT Group, Inc. or any other third-party  
12 class action settlement administrator approved by the Parties and the Court for the purposes of  
13 administering this Settlement. The Parties each represent that they do not have a financial  
14 interest in the Settlement Administrator or otherwise have a relationship with the Settlement  
15 Administrator that could create a conflict of interest.

16 29. “Settlement Administration Costs” includes all costs payable to the Settlement  
17 Administrator for administering this Settlement, including, but not limited to, printing,  
18 distributing, and tracking notice and other documents for this Settlement, tax reporting,  
19 distributing all payments to be made pursuant to this Settlement, and providing necessary  
20 reports and declarations, as requested by the Parties. After conference and consultation with the  
21 Settlement Administrator, no more than Fourteen Thousand Dollars and Zero Cents  
22 (\$14,000.00) will be allocated to Settlement Administration.

23 30. “Workweeks” means the number of calendar weeks that the Class Member  
24 worked as a non-exempt employee in California during the Class Period.

25 31. “Workweek Value” means the value of each compensable Workweek, as  
26 determined by the formula set forth in herein.

## 27 **TERMS OF AGREEMENT**

28 Plaintiff, on behalf of herself and the Settlement Class, and Defendants agree as

1 follows:

2           32.     Funding of the Gross Settlement Amount. Within 10 business days after the  
3 Effective Date, Defendants will deposit the Gross Settlement Amount into a Qualified  
4 Settlement Fund, with the Settlement Administrator. The Gross Settlement Amount will be used  
5 to pay: (i) Individual Settlement Amounts; (ii) the Class Representative Enhancement Payment  
6 to Plaintiff; (iii) Attorneys' Fees and Costs; (iv) the PGA Payment; and the (v) Settlement  
7 Administration Costs.

8           33.     Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys' Fees  
9 and Costs of not more than Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) in  
10 attorney's fees and not more than Seventeen Thousand Dollars and Zero Cents (\$17,000.00) in  
11 costs, and Defendants agree not to oppose such application. All Attorneys' Fees and Costs will  
12 be paid from the Gross Settlement Amount. Plaintiff and Class Counsel will not have the right  
13 to revoke this Settlement in the event the Court fails to approve the amount of Attorneys' Fees  
14 and Costs sought by Class Counsel. Any portion of the Attorneys' Fees and Costs not awarded  
15 to Class Counsel will be added to the Net Settlement Amount.

16           34.     Class Representative Enhancement Payment. Plaintiff will apply to the Court for  
17 a Class Representative Enhancement Payment of not more than Five Thousand Dollars and Zero  
18 Cents (\$5,000.00) for her effort and work in prosecuting the Action on behalf of Class Members  
19 and Aggrieved Employees and Defendants agree not to oppose such application. The Class  
20 Representative Enhancement Payment, which will be paid from the Gross Settlement Amount,  
21 will be in addition to Plaintiff's right to an Individual Settlement Payment pursuant to the  
22 Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on  
23 the payments made pursuant to this paragraph and will hold Defendants harmless from any claim  
24 or liability for taxes, penalties, or interest arising as a result of the payments. Plaintiff will not  
25 have the right to revoke this Settlement in the event the Court fails to approve the amount sought  
26 by Plaintiff as a Class Representative Enhancement Payment. Any portion of the Class  
27 Representative Enhancement Payment not awarded to the Class Representative will be added to  
28 the Net Settlement Amount.

1           35.     Settlement Administration Costs. The Settlement Administrator will be paid for  
2 the reasonable costs of administration of the Settlement and distribution of payments. These  
3 costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the  
4 required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,  
5 preparing and distributing Notices of Class Action Settlement, calculating and distributing all  
6 payments to be made pursuant to the Settlement, and providing necessary reports and  
7 declarations. Class Counsel obtained a “not to exceed” quote from the Settlement Administrator  
8 to complete the administration for Fourteen Thousand Dollars and Zero Cents (\$14,000.00).  
9 The Settlement Administrator’s “not to exceed” quote will represent the Settlement  
10 Administrator’s agreement that, based on the class size and distributions under the terms of this  
11 Settlement, the costs for administration of the terms of this Settlement will not exceed the  
12 specified amount. All of the Settlement Administration Costs shall be paid from the Gross  
13 Settlement Amount upon completion of all duties required to be performed by the Settlement  
14 Administrator under the terms of this Settlement, or as otherwise required by the Court, subject  
15 to the “not to exceed” quote from the Settlement Administrator. The Settlement Administrator  
16 will set up the Qualified Settlement Fund.

17           36.     PAGA Payment. Thirty Thousand Dollars and Zero Cents (\$30,000.00) shall be  
18 allocated from the Gross Settlement Amount for settlement of claims for civil penalties under  
19 PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of such \$30,000.00  
20 PAGA Payment, or \$22,500.00, to the LWDA. Twenty-five (25%) of the \$30,000.00 PAGA  
21 Payment, or \$7,500.00, will be included in the Net Settlement Amount and distributed to  
22 Settlement Class Members as described in this Agreement. Each Settlement Class Member’s  
23 pro rata share of that \$7,500.00 will be part of his or her Individual Settlement Payment.

24           37.     Individual Settlement Payment Calculations. Individual Settlement Payments  
25 will be calculated and apportioned from the Net Settlement Amount based on the number of  
26 Workweeks a Class Member worked during the Class Period as a non-exempt employee in  
27 California. Specific calculations of Individual Settlement Payments will be made as follows:

28           34(a). The Settlement Administrator will calculate the total number of

1 Workweeks worked by each Class Member as a non-exempt employee in California during the  
2 Class Period and the aggregate total number of Workweeks worked by all Class Members as  
3 non-exempt employees in California during the Class Period.

4 34(b). To determine each Class Member's estimated "Individual Settlement  
5 Payment," the Settlement Administrator will use the following formula: The Net Settlement  
6 Amount will be divided by the aggregate total number of Workweeks, resulting in the  
7 Workweek Value. Each Class Member's "Individual Settlement Payment" will be calculated by  
8 multiplying each individual Class Member's total number of Workweeks by the Workweek  
9 Value.

10 34(c). The entire Net Settlement Amount will be disbursed as Individual  
11 Settlement Payments to Class Members. If there are any valid and timely Requests for  
12 Exclusion from members of the Settlement Class, the Settlement Administrator shall  
13 proportionately increase the Individual Settlement Payment for each Class Member according  
14 to the number of Workweeks worked, so that the amount actually distributed to the Settlement  
15 Class equals 100% of the Net Settlement Amount.

16 38. No Credit Toward Benefit Plans. The Individual Settlement Payments made to  
17 Class Members under this Settlement, as well as any other payments made pursuant to this  
18 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to  
19 which any Class Members may be eligible, including, but not limited to: (i) profit-sharing  
20 plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick  
21 leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties' intention  
22 that this Settlement Agreement will not affect any rights, contributions, or amounts to which  
23 any Class Members may be entitled under any benefit plans.

24 39. Settlement Administration Process. The Parties agree to cooperate in the  
25 administration of the settlement and to make all reasonable efforts to control and minimize the  
26 costs and expenses incurred in administration of the Settlement.

27 40. Delivery of the Class List. Within ten (10) calendar days of entry of the Court's  
28 Order Granting Preliminary Approval, Defendants will provide the Class List to the Settlement

1 Administrator.

2 41. Notice by First-Class U.S. Mail. Within ten (10) days after receiving the Class  
3 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class  
4 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses  
5 identified in the Class List.

6 42. Confirmation of Contact Information in the Class List and Undeliverable  
7 Notices. Prior to mailing, the Settlement Administrator will perform a search based on the  
8 National Change of Address Database for information to update and correct for any known or  
9 identifiable address changes. Any Notice Packets returned to the Settlement Administrator as  
10 non-deliverable on or before the Response Deadline will be sent promptly via regular First-  
11 Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will  
12 indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided,  
13 the Settlement Administrator will promptly attempt to determine the correct address using an  
14 Accurant search/skip-trace and will then perform a single re-mailing.

15 43. Notices of Class Action Settlement. All Class Members will be mailed a Notice  
16 Packet in the form attached as Exhibit A, B, and C or as provided by Court order.

17 44. Disputed Information on Notices of Class Action Settlement. Class Members  
18 will have an opportunity to dispute the information provided in their Notices of Class Action  
19 Settlement. To the extent Class Members dispute their employment dates or the number of  
20 Workweeks, Class Members may produce evidence to the Settlement Administrator showing  
21 that such information is inaccurate. The Settlement Administrator will advise the Parties of  
22 such dispute, allow Defendants five (5) business days to respond with any additional  
23 information or records, and then decide the dispute. Defendants' records will be presumed  
24 correct, but the Settlement Administrator will evaluate the evidence submitted by the Class  
25 Member and Defendants and will make the final decision as to the merits of the dispute.

26 45. Requests for Exclusion. The Notice Packet shall include a Request for  
27 Exclusion as attached **Exhibit C**. Any Class Member wishing to opt-out from the Settlement  
28 Agreement must sign and postmark a written Request for Exclusion to the Settlement

1 Administrator within the Response Deadline. The postmark date will be the exclusive means to  
2 determine whether a Request for Exclusion has been timely submitted. The Parties and their  
3 counsel will not solicit or encourage any Class Member, directly or indirectly, to opt out of the  
4 Settlement Agreement. More specifically, a Class Member may request to be excluded from the  
5 effect of this Agreement, and any payment of amounts under this Agreement by timely mailing  
6 a Request for Exclusion letter to the Settlement Administrator stating that the Class Member  
7 wants to be excluded from this Action. This letter must include the Class Member's name,  
8 address, telephone number, and signature. To be valid and timely, the request to be excluded  
9 must be postmarked by the Response Deadline date that will be specified in the Class Notice  
10 (no less than forty-five (45) days from the initial mailing of the Class Notice by the Settlement  
11 Administrator). A Class Member who properly submits a valid and timely request to be  
12 excluded from the Action will not receive any payment of any kind in connection with this  
13 Agreement or this Action, will not be bound by or receive any benefit of this Agreement, and  
14 will have no standing to object to the Settlement. Class Members who do not timely request  
15 exclusion will be bound by the releases herein and receive an individual settlement payment  
16 ("Participating Class Members"). A request for exclusion must be mailed to the Settlement  
17 Administrator at its address to be provided in the Class Notice, and the Settlement  
18 Administrator will promptly transmit the requests for exclusion to counsel for the parties.

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

28 47. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class

1 Member who does not affirmatively opt out of the Settlement Agreement by submitting a  
2 timely and valid Request for Exclusion will be bound by all of its terms, including those  
3 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if  
4 it grants final approval of the Settlement.

5       48.     Objection Procedures. The Notice Packet shall include an Objection Form as  
6 attached **Exhibit B**. The Notice Packet shall state that Settlement Class Members who wish to  
7 object to the Settlement may do so by a written statement of objection (“Notice of Objection”)  
8 to be mailed by the Response Deadline to the Settlement Administrator or by appearing at the  
9 hearing for Final Approval. The Objection must be signed by the Class Member and contain all  
10 information required by this Settlement Agreement. The postmark date of the filing and service  
11 will be deemed the exclusive means for determining that the Objection is timely. The Notice of  
12 Objection must state: (1) the case name and number; (2) the name of the Settlement Class  
13 Member; (3) the address of the Settlement Class Member; (4) the last four digits of the  
14 Settlement Class Member’s Social Security number; (4) the basis for the objection; and (5) if  
15 the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness  
16 Hearing. The Settlement Administrator will promptly provide any Notices of Objection to the  
17 parties’ counsel upon receiving them. Class Counsel will include all objections received and  
18 Plaintiff’s response(s) with Plaintiff’s motion for final approval of the Settlement. Settlement  
19 Class Members may also have a right to have their objections heard at the Final  
20 Approval/Settlement Fairness Hearing. Class Counsel will not represent any Class Members  
21 with respect to any such Objections to this Settlement, and any Class Members who request  
22 exclusion from the Settlement will not have standing to object to it.

23       49.     Settlement Administrator Reports. The Settlement Administrator will provide  
24 Defendants’ counsel and Class Counsel a weekly report of the number of Class Members who  
25 have submitted valid Requests for Exclusion, Objections, and disputes regarding Workweeks  
26 calculations. Additionally, the Settlement Administrator will provide to counsel for both Parties  
27 any updated reports regarding the administration of the Settlement Agreement as needed or  
28 requested.

1           50.     Distribution and Timing of Payments. Within 25 days of the Effective Date, and  
2 after Defendants has fully funded the Qualified Settlement Fund with the Gross Settlement  
3 Amount, the Settlement Administrator will issue payments to: (i) all Class Members who have  
4 not submitted a valid and timely Request for Exclusion, including any Class Member whose  
5 notice was returned as undeliverable; (ii) Plaintiff; (iii) Class Counsel; and (iv) the LWDA. The  
6 Settlement Administrator will also issue a payment to itself for Court-approved services  
7 performed in connection with the Settlement. The Settlement Administrator will pay Individual  
8 Settlement Payments from the Net Settlement Amount to all Participating Class Members. The  
9 Settlement Administrator will do so by sending a check in the appropriate amount to the Class  
10 Member at the address indicated in the list of Class Member names and addresses provided by  
11 Defendants, or as subsequently determined by the Settlement Administrator to be correct.

12           51.     Un-cashed Settlement Checks. Class Members will receive checks for their  
13 Individual Settlement Payments. Checks will remain negotiable for 180 days (“Check-Cashing  
14 Deadline”). Any check not cashed within 180 calendar days will be void. The money from the  
15 uncashed checks shall be distributed by the Settlement Administrator, in accordance with  
16 California Code of Civil Procedure section 384. Any amounts from the settlement checks that  
17 remain uncashed and otherwise unclaimed shall be tendered to the Valley Children’s Hospital.

18           52.     Certification of Completion. Upon completion of administration of the  
19 Settlement, the Settlement Administrator will provide a written declaration under oath to certify  
20 such completion to the Court and counsel for all Parties.

21           53.     Allocation of Individual Settlement Payments. All Individual Settlement  
22 Payments will be allocated as follows: (a) one-third as wages and (b) two-thirds as penalties  
23 and interests. The Settlement Administrator will be responsible for issuing to claimants a form  
24 W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to  
25 penalties.

26           54.     Administration of Taxes by the Settlement Administrator. The Settlement  
27 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel  
28 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The

1 Settlement Administrator will also be responsible for forwarding all taxes and penalties to the  
2 appropriate government authorities as may be required by law.

3 55. Tax Liability. Defendants make no representation as to the tax treatment or  
4 legal effect of the payments called for hereunder, and Plaintiff and Class Members are not  
5 relying on any statement, representation, or calculation by Defendants or by the Settlement  
6 Administrator in this regard. Plaintiff and Class Members understand and agree that they will  
7 be solely responsible for the payment of any taxes and penalties assessed on the payments  
8 described herein and will defend, indemnify, and hold Defendants free and harmless from and  
9 against any claims resulting from treatment of such payments as non-taxable damages.

10 56. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR  
11 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY  
12 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER  
13 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS  
14 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN  
15 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR  
16 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE  
17 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN  
18 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31  
19 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED  
20 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX  
21 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS  
22 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE  
23 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO  
24 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY  
25 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY  
26 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
27 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER  
28 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY

1 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF  
2 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
3 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
4 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
5 AGREEMENT.

6 57. No Prior Assignments. The Parties and their counsel represent, covenant, and  
7 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported  
8 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,  
9 demand, action, cause of action or right herein released and discharged.

10 58. Nullification of Settlement Agreement. In the event that: (i) the Court does not  
11 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final  
12 for any other reason, then this Settlement Agreement, and any documents generated to bring it  
13 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of  
14 this Settlement Agreement will likewise be treated as void from the beginning, it will be of no  
15 force or effect whatsoever, it will not be referred to or used for any purpose whatsoever, and the  
16 negotiation, terms and entry of it shall remain subject to the provisions of California Evidence  
17 Code §§ 1119 and 1152.

18 Defendants deny all of the claims and allegations asserted in the Action (as defined  
19 herein). Defendants have agreed to resolve this Action via this Stipulation, but to the extent this  
20 Stipulation is deemed void or does not take effect, Defendants do not waive, but rather  
21 expressly reserves, all rights to challenge all such claims and allegations in the Action upon all  
22 procedural and factual grounds, including without limitation the ability to challenge suitability  
23 for class treatment or representative adjudication on any grounds or to assert any and all  
24 defenses or privileges. The Class Representative and their counsel agree that Defendants retain  
25 and reserve these rights. In particular, the Class Representative and their counsel waive and  
26 agree not to argue or to present any argument that Defendants would be estopped from  
27 contesting class certification because it has entered into this Stipulation.

28 59. Tolerance of Opt-Outs. Defendants retain the right, in the exercise of their sole

1 discretion, to nullify the settlement within thirty (30) days after expiration of the opt out period, if  
2 more than one hundred and six (106) Class Members opt out of this settlement.

3 60. Escalator. This settlement is based on Defendants' representation that there are  
4 approximately 1,672 Class Members and approximately 52,350 workweeks as of November 18,  
5 2020. At the time of preliminary approval, if the number of workweeks increases by more than  
6 10% upon confirmation of the workweeks, then there will be a pro rata adjustment to the Gross  
7 Settlement Amount which shall automatically increase in proportion to the increased percentage of  
8 workweeks.

9 61. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court  
10 to request the Preliminary Approval of the Settlement Agreement, and the entry of a  
11 Preliminary Approval Order for: (i) conditional certification of the Settlement Class for  
12 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, (iii)  
13 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval  
14 Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as  
15 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit  
16 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the  
17 proposed Notice of Class Action Settlement.

18 62. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of  
19 the deadlines to postmark Requests for Exclusion or Objections to the Settlement Agreement,  
20 and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be  
21 conducted to determine the Final Approval of the Settlement Agreement along with the  
22 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Representative  
23 Enhancement Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement Administration  
24 Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than thirty (30)  
25 days after the Response Deadline. Class Counsel will be responsible for drafting all documents  
26 necessary to obtain final approval. Class Counsel will also be responsible for drafting the  
27 attorneys' fees and costs application to be heard at the final approval hearing.

28 63. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by

1 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the  
2 Judgment to the Court for its approval. After entry of the Judgment, the Court will have  
3 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement  
4 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-  
5 Judgment matters as may be appropriate under court rules or as set forth in this Settlement  
6 Agreement.

7         64.     General Release by Plaintiff. In consideration for the consideration set forth in  
8 this Agreement, Plaintiff, for herself, their heirs, successors and assigns, does waive, release,  
9 acquit and forever discharge the Released Parties, from any and all claims, actions, charges,  
10 complaints, grievances and causes of action, of whatever nature, whether known or unknown,  
11 which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including but not  
12 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,  
13 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,  
14 personal injury claims, emotional distress claims, invasion of privacy claims, defamation  
15 claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal,  
16 state or other governmental statute, law, regulation or ordinance, including any claims arising  
17 under the California Fair Employment and Housing Act (FEHA), the California Labor Code,  
18 the Wage Orders of California's Industrial Welfare Commission, other state wage and hour  
19 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act  
20 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of  
21 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the  
22 Family Medical Leave Act, California's Whistleblower Protection Act, California Business &  
23 Professions Code Section 17200 et seq., and any and all claims arising under any federal, state  
24 or other governmental statute, law, regulation or ordinance. Plaintiff hereby expressly waive  
25 and relinquish any and all claims, rights, or benefits that they may have under California Civil  
26 Code § 1542, which provides as follows:

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

1                   **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
2                   **FAVOR AT THE TIME OF EXECUTING THE RELEASE**  
3                   **AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**  
4                   **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
5                   **WITH THE DEBTOR OR RELEASED PARTY.**

6           Plaintiff may hereafter discover claims or facts in addition to, or different from, those  
7   which they now know or believe to exist, but they expressly agree to fully, finally and forever  
8   settle and release any and all claims against the Released Parties, known or unknown, suspected  
9   or unsuspected, which exist or may exist against Released Parties at the time of execution of  
10   this Agreement, including, but not limited to, any and all claims relating to or arising from  
11   Plaintiff's employment with Defendants. The Parties further acknowledge, understand and  
12   agree that this representation and commitment is essential to the Agreement and that this  
13   Agreement would not have been entered into were it not for this representation and  
14   commitment.

15           65.     Release by All Settlement Class Members. Plaintiff and all Class Members who  
16   do not submit a valid and timely Request for Exclusion, on behalf of himself or herself, his or  
17   her heirs, descendants, dependents, executors, administrators, assigns, and successors, fully and  
18   finally release and discharge the Released Parties from any and all of the Released Claims for  
19   the entirety of the Class Period. This waiver and release will be final and binding on the  
20   Effective Date and will have every preclusive effect permitted by law. Plaintiff and the  
21   Settlement Class Members may hereafter discover facts or legal arguments in addition to or  
22   different from those they now know or currently believe to be true with respect to the Released  
23   Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the  
24   scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the  
25   Settlement Class Members shall be deemed to have, and by operation of the final judgment  
26   approved by the Court, shall have, fully, finally, and forever settled and released all of the  
27   Released Claims. The parties understand and specifically agree that the scope of the release  
28   described in this Paragraph: is a material part of the consideration for this Agreement; was

critical in justifying the agreed upon economic value of this settlement and without it Defendants would not have agreed to the consideration provided; and is narrowly drafted and necessary to ensure that Defendants is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts, causes of action, and legal theories contained in the operative complaint in the Action.

66. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

67. Publicity Agreement. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except potential class members and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff and Class Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement.

68. No Unalleged Claims. Except for those claims brought forth under *Vidali Aleman, et al. v. Moonlight Packing Corporation, et al.*, Fresno County Superior Court, Case No. 20CECG01196 to the extent they are not covered under the Released Claims, Plaintiff and Class Counsel represent that they are not currently aware of any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement; and (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendants, except such facts and theories specifically alleged in the operative complaints in this Action. Plaintiff and Plaintiff's

1 Counsel will further represent that, other than the instant Action, they have no current intention  
2 of asserting any other claims against Defendants in any judicial or administrative forum.

3 Plaintiff and Plaintiff's Counsel will further represent that they do not currently know of or  
4 represent any persons who have expressed any interest in pursuing litigation or seeking any  
5 recovery against Defendants. The Parties acknowledge, understand and agree that the  
6 representations described in this paragraph are essential to the Settlement Agreement and that  
7 this Settlement Agreement would not have been entered into were it not for this representation.

8         69.     Entire Agreement. This Settlement Agreement and any attached Exhibits  
9 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous  
10 written or oral agreements may be deemed binding on the Parties.

11         70.     Amendment or Modification. This Settlement Agreement may be amended or  
12 modified only by a written instrument signed by counsel for all Parties or their successors-in-  
13 interest.

14         71.     Binding on Successors and Assigns. This Settlement Agreement will be binding  
15 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously  
16 defined.

17         72.     California Law Governs. All terms of this Settlement Agreement and Exhibits  
18 hereto will be governed by and interpreted according to the laws of the State of California.

19         73.     Headings. The headings contained in this Settlement Agreement are for  
20 convenience and reference purposes only and will not be given weight in its construction.

21         74.     Execution and Counterparts. This Settlement Agreement is subject only to the  
22 execution of all Parties. However, the Settlement may be executed in one or more counterparts.  
23 All executed counterparts and each of them, including facsimile and scanned copies of the  
24 signature page, will be deemed to be one and the same instrument provided that counsel for the  
25 Parties will exchange among themselves original signed counterparts.

26         75.     Acknowledgement that the Settlement is Fair and Reasonable. The Parties  
27 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action  
28 and have arrived at this Settlement after arm's-length negotiations and in the context of

1 adversarial litigation, taking into account all relevant factors, present and potential. The Parties  
2 further acknowledge that they are each represented by competent counsel and that they have  
3 had an opportunity to consult with their counsel regarding the fairness and reasonableness of  
4 this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement  
5 and the reasonableness of the Settlement and the Court may, in its discretion, contact the  
6 Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and  
7 reasonable.

8         76.     Invalidity of Any Provision. Before declaring any provision of this Settlement  
9 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest  
10 extent possible consistent with applicable precedents so as to define all provisions of this  
11 Settlement Agreement valid and enforceable.

12         77.     Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate  
13 to class certification for purposes of this Settlement only; except, however, that Plaintiff or  
14 Class Counsel may appeal any reduction in Attorneys' Fees and Costs below the amount they  
15 request from the Court, and either party may appeal any court order that materially alters the  
16 Settlement Agreement's terms.

17         78.     Non-Admission of Liability. The Parties enter into this Settlement to resolve the  
18 dispute that has arisen between them and to avoid the burden, expense, and risk of continued  
19 litigation. In entering into this Settlement, Defendants do not admit, and specifically deny, that  
20 they violated any federal, state, or local law; violated any regulations or guidelines promulgated  
21 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached  
22 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or  
23 engaged in any other unlawful conduct with respect to its employees. Neither this Settlement,  
24 nor any of its terms or provisions, nor any of the negotiations connected with it, will be  
25 construed as an admission or concession by Defendants of any such violations or failures to  
26 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of  
27 this Settlement, this Settlement and its terms and provisions will not be offered or received as  
28 evidence in any action or proceeding to establish any liability or admission on the part of

1 Defendants or to establish the existence of any condition constituting a violation of, or a non-  
2 compliance with, federal, state, local or other applicable law.

3 The Parties understand and acknowledge that this Settlement Agreement constitutes a  
4 compromise and settlement of disputed claims. No action taken by the Parties whether  
5 previously or in connection with the negotiations or proceedings connected with the Settlement  
6 or this Agreement shall be deemed or construed to be an admission of the truth or falsity of any  
7 allegations, claims, or defenses heretofore made, or an acknowledgment or admission by any  
8 party of any fact, fault, liability, or wrongdoing of any kind whatsoever.

9 Neither the Settlement, nor any act performed or document executed pursuant to or in  
10 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission  
11 of, or evidence of, the validity of any claim made by the Plaintiff or Class Members, or of any  
12 wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be  
13 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in  
14 the Action or in any proceeding in any court, administrative agency or other tribunal; or  
15 construed as an admission by Plaintiff regarding the validity of any allegation or claim asserted  
16 in this Action or that Plaintiff has waived any allegation or claim asserted in the Action.

17 79. Waiver. No waiver of any condition or covenant contained in this Settlement or  
18 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or  
19 constitute a further waiver by such party of the same or any other condition, covenant, right or  
20 remedy.

21 80. Enforcement Action. In the event that one or more of the Parties institutes any  
22 legal action or other proceeding against any other Party or Parties to enforce the provisions of  
23 this Settlement or to declare rights and/or obligations under this Settlement, the successful  
24 Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable  
25 attorneys' fees and costs, including expert witness fees incurred in connection with any  
26 enforcement actions.

27 81. Mutual Preparation. The Parties have had a full opportunity to negotiate the  
28 terms and conditions of this Settlement. Accordingly, this Settlement will not be construed

1 more strictly against one party than another merely by virtue of the fact that it may have been  
2 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length  
3 negotiations between the Parties, all Parties have contributed to the preparation of this  
4 Settlement.

5 82. Representation By Counsel. The Parties acknowledge that they have been  
6 represented by counsel throughout all negotiations that preceded the execution of this  
7 Settlement, and that this Settlement has been executed with the consent and advice of counsel.  
8 Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the  
9 Settlement Agreement.

10 83. All Terms Subject to Final Court Approval. All amounts and procedures  
11 described in this Settlement Agreement herein will be subject to final Court approval.

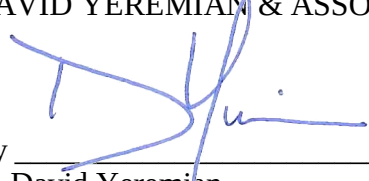
12 84. Cooperation and Execution of Necessary Documents. All Parties will cooperate  
13 in good faith and execute all documents to the extent reasonably necessary to effectuate the  
14 terms of this Settlement Agreement.

15 85. Binding Agreement. The Parties warrant that they understand and have full  
16 authority to enter into this Settlement, and further intend that this Settlement will be fully  
17 enforceable and binding on all parties, and agree that it will be admissible and subject to  
18 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality  
19 provisions that otherwise might apply under federal or state law.

20 **SO AGREED AND STIPULATED.**

21 DATED: January 19, 2021

22 DAVID YEREMIAN & ASSOCIATES, INC.

23   
24 By \_\_\_\_\_  
25 David Yeremian  
26 Natalie Haritoonian  
27 Attorneys for Plaintiff VIDALI ALEMAN  
28 and all others similarly situated

1 DATED: January \_\_, 2021

BAKER MANOCK & JENSEN, P.C.

2  
3 By \_\_\_\_\_  
4 Diane Coderniz  
5 Attorneys for Defendants MOONLIGHT  
6 PACKING CORPORATION and  
7 MOONLIGHT PACKING COMPANY LLC  
8

9 DATED: January <sup>19</sup> \_\_, 2021

10 DocuSigned by:  
11 By Vidalia  
12 Plaintiff Vidal Aleman  
13

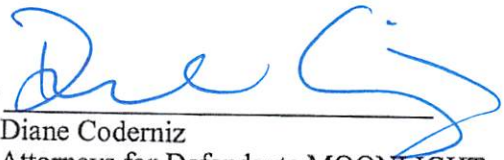
14 DATED: January \_\_, 2021

MOONLIGHT PACKING  
CORPORATION and MOONLIGHT  
PACKING COMPANY LLC

15  
16  
17 By \_\_\_\_\_  
18 Name:  
19 Title:  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 DATED: January 27, 2021

BAKER MANOCK & JENSEN, P.C.

2  
3 By   
4 Diane Coderniz  
5 Attorneys for Defendants MOONLIGHT  
6 PACKING CORPORATION and  
7 MOONLIGHT PACKING COMPANY LLC  
8

9 DATED: January \_\_, 2021

10  
11 By \_\_\_\_\_  
12 Plaintiff Vidali Aleman  
13

14 DATED: January 27, 2021

15 MOONLIGHT PACKING  
16 CORPORATION and MOONLIGHT  
17 PACKING COMPANY LLC

18 By   
19 Name: Ty TAVLAN  
20 Title: VP  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

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

*Vidali Aleman, et al. vs. Moonlight Packing Corporation, et al., Case No. 20CECG01196*

**As a current or former non-exempt employee of Moonlight Packing Corporation and/or Moonlight Packing Company LLC who worked in California, you may be entitled to receive money from a class action settlement.**

Admin ID: <<Admin ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip Code>>

Please provide current address (if different) here:

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*The Fresno County Superior Court has authorized this Class Notice.  
This is not a solicitation from a lawyer.*

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF MOONLIGHT PACKING CORPORATION OR MOONLIGHT PACKING COMPANY LLC WHO WORKED IN CALIFORNIA FROM MAY 4, 2016 THROUGH JANUARY 19, 2021.

- A proposed settlement of \$900,000.00 (the “Gross Settlement Amount”) will be used to pay claims to: current and former non-exempt packing employees of Moonlight Packing Corporation and Moonlight Packing Company LLC, who worked in California from May 4, 2016 through January 19, 2021 (such periods of time, the “Class Period” and such employees, the “Class Members”).
- The settlement resolves a lawsuit entitled *Vidali Aleman, et al. vs. Moonlight Packing Corporation, et al.*, Case No. 20CECG01196 (the “Lawsuit”) over whether Moonlight Packing Corporation and Moonlight Packing Company LLC properly paid employees for all hours worked, properly paid reporting time pay, provided employees meal and rest periods, and other legal consequences that would follow from not doing so, provided accurate wage statements, paid all wages upon termination, reimbursed employees for necessary business expenses, timely paid all wages, and kept required payroll records. This settlement avoids the costs and risks from continuing the Lawsuit, pays money to persons like you, and releases Moonlight Packing Corporation and Moonlight Packing Company LLC.
- The Court has not made a determination of the validity of the claims in the Lawsuit. Moonlight Packing Corporation and Moonlight Packing Company LLC deny any and all liability arising from any of the claims and contend that at all relevant times it properly compensated all employees and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of workweeks worked, rounded up to the nearest full workweek, during the Class Period.
- **PLEASE READ THIS CLASS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

You worked a total number of <<Work Weeks>> during the Class Period.

Based on your workweeks it is expected that your gross settlement payment before payroll taxes is approximately <<EstISP>>

Each settlement payment will be allocated as follows for tax purposes: one-third as wages, to be reported on an IRS W-2, and which will be reduced for the Class Member's share of taxes and withholdings; and two-thirds as interest, penalties, and liquidated damages, which portion shall be reported on an IRS Form 1099, and which will not be subject to reduction for taxes and withholdings.

#### YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

|                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DO NOTHING                         | If you do not do anything, you will receive a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you. You will have 180 days to cash the check. If you do not cash the check, the money will revert to Valley Children's Hospital, but you will still be deemed to have released your claims. |
| OPT OUT                            | If you opt out, you will not receive any payment and will retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit. You may opt out by following the procedures set forth below.                                                                                                                                                                                                                                  |
| OBJECT TO THE SETTLEMENT           | If you do not opt out, you may write to the Settlement Administrator, CPT Group, Inc., about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court. More information on this process is set forth below.                                                                                                                                                                                        |
| OBJECT TO THE WORKWEEK CALCULATION | If you feel that you worked a different amount of workweeks than identified above, you may object to that calculation by following the procedures set forth below.                                                                                                                                                                                                                                                                                                   |
| ATTEND A HEARING                   | You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. Regardless of whether you timely file and serve a written objection, you may ask to speak about your objection at the hearing. You can also send a letter to the Settlement Administrator, CPT Group, Inc., providing notice of your intention to appear and speak at the hearing.                                                          |

#### IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

##### 1. Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Lawsuit and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Lawsuit, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the Fresno County Superior Court. The person who sued is called "Plaintiff" and the organizations they sued are called "Defendants."

## 2. What is the Lawsuit about?

In the Lawsuit, Vidali Aleman, the Representative Plaintiff, alleged multiple violations of the California Labor Code, the California Business and Professions Code, including causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Failure to Pay Reporting Time Pay; (4) Meal Period Liability Under Labor Code § 226.7; (5) Rest-Break Liability Under Labor Code § 226.7; (6) Violation of Labor Code § 226(a); (7) Violation of Labor Code § 203; (8) Violation of Labor Code § 204; (9) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (10) Violation of Business & Professions Code § 17200, *et seq.*; and (11) Penalties Pursuant to Labor Code § 2698, *et seq.*

## 3. Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Representative Plaintiff won at trial. Moonlight Packing Corporation and Moonlight Packing Company LLC believe that the Representative Plaintiff would not prevail if this case went to trial. The Court has not decided in favor of the Representative Plaintiff or Moonlight Packing Corporation and Moonlight Packing Company LLC. There has been no trial in this case. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial, yet Class Members are still entitled to receive payments if they comply with the instructions in this Class Notice. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Representative Plaintiff and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

## 4. What is a class action settlement?

The Court must approve the terms of the proposed settlement as fair and reasonable. Once approved, the settlement will affect all Class Members, except those who have properly opted out. This Class Notice explains your legal rights, the terms of the settlement, what you must do to participate, and the amount of money you may receive. Please read this entire Class Notice carefully.

## 5. What should I do?

You can do nothing, and if you are entitled to a payment you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown.

## 6. How much will my payment be?

After all fees, costs, and offsets are taken as set forth under Section IV of the parties' Joint Stipulation of Class Settlement (which is available for review), the remainder will be used to pay Class Members a pro-rata payment based on the number of workweeks each Class Member worked during the Class Period.

Under the proposed Settlement, Moonlight Packing Corporation and Moonlight Packing Company LLC will pay \$900,000 to fully and finally resolve all claims in the Action (the "Gross Settlement Amount"). The amount to be distributed to Class Members who do not exclude themselves from the settlement (the "Net Settlement Amount") will be the Gross Settlement Amount, minus the following amounts: (a) Settlement Administration Costs, which shall not exceed \$14,000; (b) enhancement payments to the Plaintiff not to exceed \$5,000 for her work and efforts in prosecuting this case; (c) Class Counsel's attorney's fees not to exceed one-third of the Gross Settlement Amount, or

\$300,000; (d) reimbursement of Class Counsel's actual litigation costs and expenses in an amount not to exceed \$17,000; and (e) payment of \$30,000 to the Labor and Workforce Development Agency for its share of the penalties under the PAGA ("LWDA Payment"). The attorneys' fees, litigation costs and expenses, enhancement payment, Settlement Administration Costs, and LWDA Payment are all subject to Court approval. The Net Settlement Amount will be used to pay Class Members a pro-rata payment based on the number of workweeks each Class Member worked during the Class Period.

If you do not dispute your workweek calculation, and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, you do not need to take any action to receive a settlement payment.**

#### 7. When would I get my payment?

The Court will hold a hearing on [ENTER DATE AND TIME] to decide whether to approve the proposed settlement. If the Court approves the settlement and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement, call the Settlement Administrator at 1-XX-XXX-XXXX, or contact Class Counsel (see below for Class Counsel's contact information.). *Please be patient.*

#### 8. What am I releasing?

Upon the Court's final approval of the settlement, and except as to such rights or claims as may be created by the settlement, Plaintiffs and Class Members who have not effectively opted-out of the settlement as described below, fully release Rapid Manufacturing, and their past, present and/or future, direct and/or indirect, officers, directors, shareholder, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, and their respective successors; and predecessors in interest, assigns, subsidiaries, affiliates, and parents if any, without limitation ("Released Parties") of all causes of action and factual or legal theories that were alleged in the operative complaints or that could have been alleged against Defendant based on the facts contained in the operative complaints, including all of the following claims for relief: (a) failure to pay minimum, regular, or hourly wages, (b) failure to pay overtime wages or accurate overtime wages, (c) failure to pay reporting time pay, (d) failure to provide meal breaks and failure to pay premium pay for missed meal breaks, (e) failure to provide rest breaks and failure to pay premium pay for missed rest breaks, (f) failure to provide complete, accurate or properly formatted wage statements, (g) failure to timely pay wages during employment or upon separation, (h) failure to maintain accurate records, (i) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (j) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (k) any other claims or penalties under the California Labor Code or other wage and hour laws pleaded in the Action; and (l) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief. The time period covered by this release is May 4, 2016 through January 19, 2021.

#### 9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must submit a written, signed request to opt out of the settlement. You will have 45 days from the date of mailing of this Class Notice to do so. Your Opt-Out request must be mailed to the Settlement Administrator, CPT Group, Inc., \_\_\_\_\_, California \_\_\_\_\_ and be postmarked no later than [ENTER DATE], or it will not be considered and you will be bound by the settlement.

#### 10. Do I have a lawyer in this case?

The Court has appointed David Yeremian of DAVID YEREMIAN & ASSOCIATES, INC., 535 N. Brand Blvd., Suite 705, Glendale, California 91203, telephone 818.230.8380 to represent you and other Class Members in the Lawsuit. These lawyers are called Class Counsel. They will be compensated from the Total Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Class Counsel will ask the Court to award them fees up to one-third of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs incurred in connection with the Lawsuit. The Court may choose to award less than the amount requested by Class Counsel.

12. How do I tell the Court that I do not like the settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Vidali Aleman, et al. vs. Moonlight Packing Corporation, et al.*, Case No. 20CECG01196), (b) be submitted to the Settlement Administrator, CPT Group, Inc., \_\_\_\_\_, California \_\_\_\_\_, and (c) be filed or postmarked on or before **[ENTER DATE]**.

13. How do I dispute my workweek calculation?

To dispute the number of workweeks with which you have been credited, you must submit evidence to the Settlement Administrator showing that the workweek information is inaccurate. Such evidence must be mailed to the Settlement Administrator at CPT Group, Inc., \_\_\_\_\_, California \_\_\_\_\_ and postmarked on or before **[ENTER DATE]**. The Settlement Administrator shall decide the dispute. Moonlight Packing Corporation and Moonlight Packing Company LLC's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted and make a final decision on the merits of the dispute.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on **[ENTER DATE AND TIME]** at the Fresno County Superior Court, Department 402, 1130 O Street Fresno, California 93721. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections and they have been properly lodged, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

15. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. But, you are welcome to come at your own expense. If you sent an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

16. May I speak at the hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter stating that it is your “Notice of Intention to Appear” in the settlement. Be sure to include your name, address, and telephone number. Your Notice of Intention to Appear must be postmarked no later than **[ENTER DATE]**, and be sent to the Settlement Administrator, CPT Group, Inc., at the address listed above.

17. What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

**GETTING MORE INFORMATION**

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call **1-XXX-XXX-XXXX** or write the Settlement Administrator, CPT Group, Inc., located at \_\_\_\_\_, California \_\_\_\_\_.

You can also access the Fresno Superior Court Case Information Portal at <https://publicportal.fresno.courts.ca.gov/FRESNOPORTAL/Home/Dashboard/29>, or by visiting the Clerk’s Office at the Fresno County Superior Court, located at 1130 O Street Fresno, California 93721, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

The Settlement Administrator has also setup a website which has links to this Class Notice and other documents related to the proposed settlement, including the Joint Stipulation of Class Settlement. The website is: **[ENTER WEBSITE URL]**.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

# EXHIBIT B

**REQUEST FOR EXCLUSION FORM**

**ALEMAN vs. MOONLIGHT PACKING CORPORATION**  
**Case No. 20CECG01196**

**TO EXCLUDE YOURSELF FROM THE SETTLEMENT YOU MUST SIGN AND RETURN THIS FORM, POSTMARKED ON OR BEFORE **INSERT DATE**, 2021, TO: CPT GROUP, INC. AT **INSERT ADDRESS**].**

**IDENTIFYING INFORMATION**

Please verify and/or complete any missing identifying information:

[NAME]        Former Names (if any):

[ADDRESS LINE 1] \_\_\_\_\_

[ADDRESS LINE 2] \_\_\_\_\_

[TELEPHONE NUMBER] \_\_\_\_\_

**THIS FORM IS TO BE USED ONLY IF YOU DO NOT WANT TO PARTICIPATE IN THE PROPOSED SETTLEMENT. IF YOU WANT TO RECEIVE A SETTLEMENT PAYMENT, DO NOT SUBMIT THIS FORM.**

**[   ] By checking the box to the left, and signing and completing the below, I agree to the following:**

**I do not want to participate in the settlement in ALEMAN vs. MOONLIGHT PACKING CORPORATION, Case No. 20CECG01196. I understand by not participating and excluding myself from the settlement, that I will not receive any money from the settlement.**

Executed on \_\_\_\_\_, 2021

Signature: \_\_\_\_\_

# EXHIBIT C

**OBJECTION FORM**

**ALEMAN vs. MOONLIGHT PACKING CORPORATION**

**Case No. 20CECG01196**

**TO OBJECT TO THE SETTLEMENT, YOU MUST FILL OUT, SIGN AND RETURN THIS FORM, POSTMARKED ON OR BEFORE INSERT DATE, 2021, TO: CPT GROUP, INC. AT [INSERT ADDRESS].**

**IDENTIFYING INFORMATION**

Please verify and/or complete any missing identifying information:

[NAME]      Former Names (if any):

[ADDRESS LINE 1] \_\_\_\_\_

[ADDRESS LINE 2] \_\_\_\_\_

**THIS FORM IS TO BE USED ONLY IF YOU WANT TO OBJECT TO THE PROPOSED SETTLEMENT.**

**I object to the settlement for the following reasons:**

**(Attach additional pages if necessary.)**

Signed on \_\_\_\_\_, 2021

Signature: \_\_\_\_\_

# EXHIBIT 2

**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

April 6, 2020

**VIA ON-LINE SUBMISSION ONLY TO:**

<https://dir.tfaforms.net/128> (copy by certified mail to the below listed defendants)

Moonlight Packing Corporation  
George Braunstein, Agent for Service of Process  
17719 E. Huntsman  
Reedly, California 93654  
Certified Mail Tracking Number: 7018 3090 0000 6138 4769

Moonlight Packing Company LLC  
James Ty Tavlan, Agent for Service of Process  
17719 E. Huntsman  
Reedly, California 93654  
Certified Mail Tracking Number: 7018 3090 0000 6138 4776

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter  
*Vidali Aleman, et al. vs. Moonlight Packing Corporation***

Gentlepersons:

This office represents Plaintiff Vidali Aleman (“Plaintiff”) and other aggrieved employees for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, 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 herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Moonlight Packing Corporation, Moonlight Packing Company LLC, 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 Reedly, 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 pay for reporting time pay, failing to provide meal and rest breaks, failing to furnish accurate wage statements, and failing to timely pay wages including final wages, 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. Aggrieved Employees were forced into working off the clock due to pre-shift and post-shift work duties performed. Specifically, Aggrieved Employees had to wait in line to approach the timekeeping system which would take several minutes. Additionally, Aggrieved Employees had to clock out of the timekeeping system and wait to receive their paychecks.

Additionally, Defendant required Plaintiff and the Aggrieved Employees to, on occasion, report for a scheduled work day to be told whether work was available for them or not, and when there was no work, Plaintiff and the Aggrieved Employees would be sent home after waiting for as many as several hours. On such days when Defendant required Plaintiff and the Aggrieved Employees to report to work only to be sent home because work was not available, they were not paid required reporting time wages for the hours they waited without receiving their regular hourly rate of pay for them. Additionally, Defendant required Aggrieved Employees to drive to Defendant's facility in Reedley, California to pick up their paycheck. When they were thereafter sent home by Defendants because work was not available on that day, Defendant failed to pay them reporting time pay.

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

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 ten (10) hours in any one workday or more than six (6) days in any workweek prior to January 1, 2019 and also nine and a half (9.5) hours in any given day and/or more than fifty-five (55) hours in any given week from January 1, 2019. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 10 hours a day prior to January 1, 2019, and in excess of 9.5 hours a day and/or more than 55 hours in any given week after January 1, 2019, 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. 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, and 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.

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, were subject to unlawful rounding of hours, and underreporting of hours by reflecting changes to timekeeping records to reflect less time worked than was actually worked. 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 ten (10) hours in any one workday or more than six (6) days in any workweek prior to January 1, 2019, and also nine and a half (9.5) hours in any given day and/or more than fifty-five (55) hours in any given week from January 1, 2019,. However, Defendants failed to pay Aggrieved Employees for all hours worked and failed to pay overtime compensation at premium overtime rates. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 10 hours a day prior to January 1, 2019, and in excess of 9.5 hours in any given day and/or more than 55 hours in any given week after January 1, 2019, 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.

**Failure to Pay Reporting Time Pay**

The IWC Wage Order requires employers to pay half of the employee's "usual or scheduled day's work," and in no event less than two (2) hours pay on each instance the employer requires an employee to report to work, as set forth fully below:

- (A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

As addressed in detail above, Defendants followed a uniform policy of failing to pay reporting time pay on in accordance with the applicable IWC Wage Order requirements. For example, Defendant required Plaintiff and Aggrieved Employees to, on occasion, report for a scheduled work day to be told whether work was available for them or not, and when there was no work, Plaintiff and the Aggrieved Employees would be sent home after waiting for as many as several hours. On such days when Defendant required Plaintiff and the Aggrieved Employees to report to work only to be sent home because work was not available, they were not paid required reporting time wages for the hours they waited without receiving their regular hourly rate of pay

for them. Additionally, Defendant required Aggrieved Employees to drive to Defendant's facility in Reedly, California to pick up their paycheck. When they were thereafter sent home by Defendants because work was not available on that day, Defendant failed to pay them reporting time pay. Accordingly, Defendants are liable for penalties under Labor Code §2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §2699(g)(1).

**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. 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, 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 herself 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.

#### **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.

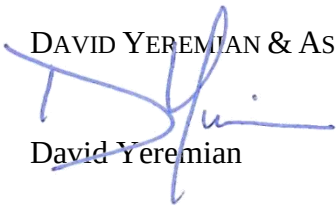
We have been constrained to initially move forward with the filing of a complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case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

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

# EXHIBIT 3

| Employee               | Job        | Date Time-in       | Meal     |          | Meal     |          | Meal    |       | Meal    |       | Time-out | Total WH |
|------------------------|------------|--------------------|----------|----------|----------|----------|---------|-------|---------|-------|----------|----------|
|                        |            |                    | Start 1  | End 1    | Start 2  | End 2    | Start 3 | End 3 | Start 4 | End 4 |          |          |
| Alfaro De Arrellano, E | Baggers    | 2/2/2019 07:40 AM  | 11:00 AM | 11:40 AM |          |          |         |       |         |       | 04:50 PM | 8.50     |
| Alfaro De Arrellano, E | Baggers    | 2/4/2019 07:10 AM  | 11:00 AM | 11:30 AM | 05:00 PM | 05:30 PM |         |       |         |       | 10:10 PM | 14.00    |
| Alfaro De Arrellano, E | Baggers    | 2/5/2019 08:10 AM  | 11:40 AM | 12:10 PM |          |          |         |       |         |       | 05:00 PM | 8.33     |
| Alfaro De Arrellano, E | Baggers    | 2/6/2019 07:40 AM  | 11:10 AM | 11:40 AM |          |          |         |       |         |       | 06:00 PM | 9.83     |
| Alfaro De Arrellano, E | Baggers    | 2/7/2019 07:30 AM  | 12:30 PM | 01:00 PM |          |          |         |       |         |       | 07:00 PM | 11.00    |
| Alfaro De Arrellano, E | Baggers    | 2/8/2019 09:00 AM  | 01:00 PM | 01:40 PM |          |          |         |       |         |       | 05:20 PM | 7.67     |
| Alfaro De Arrellano, E | Baggers    | 2/9/2019 10:30 AM  | 04:00 PM | 04:30 PM |          |          |         |       |         |       | 08:50 PM | 9.83     |
| Alfaro De Arrellano, E | Baggers    | 2/10/2019 07:30 AM | 12:10 PM | 12:30 PM |          |          |         |       |         |       | 06:00 PM | 10.17    |
| Alfaro De Arrellano, E | Baggers    | 2/11/2019 06:30 AM | 11:10 AM | 11:40 AM | 05:30 PM | 06:00 PM |         |       |         |       | 08:40 PM | 13.17    |
| Alfaro De Arrellano, E | Baggers    | 2/12/2019 06:50 AM | 11:00 AM | 11:30 AM | 05:30 PM | 06:10 PM |         |       |         |       | 08:50 PM | 12.83    |
| Alfaro De Arrellano, E | Baggers    | 2/13/2019 07:10 AM | 11:00 AM | 11:30 AM | 05:30 PM | 06:20 PM |         |       |         |       | 09:00 PM | 12.50    |
| Alfaro De Arrellano, E | Baggers    | 2/14/2019 07:10 AM | 11:00 AM | 11:30 AM | 07:00 PM | 07:50 PM |         |       |         |       | 09:00 PM | 12.50    |
| Alfaro De Arrellano, E | Baggers    | 2/15/2019 07:00 AM | 12:10 PM | 12:40 PM | 04:50 PM | 05:40 PM |         |       |         |       | 08:00 PM | 11.67    |
| Alfaro De Arrellano, E | Baggers    | 2/16/2019 06:30 AM | 11:40 AM | 12:10 PM |          |          |         |       |         |       | 05:30 PM | 10.50    |
| Alfaro De Arrellano, E | Baggers    | 2/17/2019 09:00 AM | 03:30 PM | 04:00 PM |          |          |         |       |         |       | 05:40 PM | 8.17     |
| Alfaro De Arrellano, E | Supervisor | 2/18/2019 06:50 AM | 11:40 AM | 12:10 PM | 06:00 PM | 06:30 PM |         |       |         |       | 08:40 PM | 12.83    |
| Alfaro De Arrellano, E | Supervisor | 2/19/2019 07:10 AM | 11:00 AM | 11:30 AM | 06:00 PM | 07:00 PM |         |       |         |       | 08:30 PM | 11.83    |
| Alfaro De Arrellano, E | Supervisor | 2/20/2019 06:50 AM | 01:10 PM | 01:40 PM | 05:50 PM | 06:40 PM |         |       |         |       | 08:00 PM | 11.83    |
| Alfaro De Arrellano, E | Supervisor | 2/21/2019 06:50 AM | 11:00 AM | 11:30 AM | 05:30 PM | 06:40 PM |         |       |         |       | 08:30 PM | 12.00    |
| Alfaro De Arrellano, E | Supervisor | 2/22/2019 06:40 AM | 11:00 AM | 11:40 AM | 05:40 PM | 07:10 PM |         |       |         |       | 08:10 PM | 11.33    |
| Alfaro De Arrellano, E | Supervisor | 2/23/2019 07:00 AM | 11:00 AM | 11:40 AM |          |          |         |       |         |       | 05:10 PM | 9.50     |
| Alfaro De Arrellano, E | Supervisor | 2/24/2019 07:10 AM | 10:40 AM | 11:00 AM |          |          |         |       |         |       | 04:00 PM | 8.50     |
| Alfaro De Arrellano, E | Supervisor | 2/25/2019 06:30 AM | 11:40 AM | 12:20 PM |          |          |         |       |         |       | 06:00 PM | 10.83    |
| Alfaro De Arrellano, E | Supervisor | 2/26/2019 06:40 AM | 11:00 AM | 11:40 AM | 05:50 PM | 06:40 PM |         |       |         |       | 08:30 PM | 12.33    |
| Alfaro De Arrellano, E | Supervisor | 2/27/2019 06:20 AM | 11:00 AM | 11:40 AM |          |          |         |       |         |       | 07:00 PM | 12.00    |
| Alfaro De Arrellano, E | Supervisor | 2/28/2019 06:40 AM | 11:00 AM | 11:40 AM | 06:00 PM | 06:50 PM |         |       |         |       | 08:40 PM | 12.50    |
| Alfaro De Arrellano, E | Supervisor | 3/1/2019 08:10 AM  | 12:00 PM | 01:00 PM |          |          |         |       |         |       | 04:50 PM | 7.67     |
| Alfaro De Arrellano, E | Supervisor | 3/2/2019 06:50 AM  | 12:30 PM | 01:20 PM |          |          |         |       |         |       | 03:30 PM | 7.83     |
| Alfaro De Arrellano, E | Supervisor | 3/4/2019 07:00 AM  | 12:30 PM | 01:00 PM | 06:00 PM | 06:30 PM |         |       |         |       | 08:00 PM | 12.00    |
| Alfaro De Arrellano, E | Supervisor | 3/5/2019 07:30 AM  | 10:10 AM | 11:00 AM | 07:00 PM | 07:30 PM |         |       |         |       | 08:50 PM | 12.00    |
| Alfaro De Arrellano, E | Supervisor | 3/6/2019 06:40 AM  | 11:00 AM | 11:30 AM |          |          |         |       |         |       | 06:10 PM | 11.00    |
| Alfaro De Arrellano, E | Supervisor | 3/7/2019 08:00 AM  | 12:00 PM | 12:50 PM |          |          |         |       |         |       | 05:40 PM | 8.83     |
| Alfaro De Arrellano, E | Supervisor | 3/8/2019 07:00 AM  | 11:10 AM | 11:50 AM |          |          |         |       |         |       | 05:30 PM | 9.83     |
| Alfaro De Arrellano, E | Supervisor | 3/9/2019 08:00 AM  |          |          |          |          |         |       |         |       | 11:20 AM | 3.33     |
| Alfaro De Arrellano, E | Supervisor | 3/11/2019 06:50 AM | 01:30 PM | 02:00 PM | 06:00 PM | 07:10 PM |         |       |         |       | 08:30 PM | 12.00    |
| Alfaro De Arrellano, E | Supervisor | 3/12/2019 07:30 AM | 11:10 AM | 11:30 AM |          |          |         |       |         |       | 07:10 PM | 11.33    |

| Employee               | Job        | Date Time-in       | Meal     |          | Meal     |          | Meal    |       | Meal    |       | Time-out | Total WH |
|------------------------|------------|--------------------|----------|----------|----------|----------|---------|-------|---------|-------|----------|----------|
|                        |            |                    | Start 1  | End 1    | Start 2  | End 2    | Start 3 | End 3 | Start 4 | End 4 |          |          |
| Alfaro De Arrellano, E | Supervisor | 3/13/2019 09:00 AM | 02:30 PM | 03:00 PM |          |          |         |       |         |       | 04:10 PM | 6.67     |
| Alfaro De Arrellano, E | Supervisor | 3/14/2019 09:40 AM | 02:20 PM | 02:50 PM |          |          |         |       |         |       | 07:00 PM | 8.83     |
| Alfaro De Arrellano, E | Supervisor | 3/15/2019 07:30 AM | 11:00 AM | 11:30 AM |          |          |         |       |         |       | 08:30 PM | 12.50    |
| Alfaro De Arrellano, E | Supervisor | 3/16/2019 07:20 AM | 11:00 AM | 11:40 AM |          |          |         |       |         |       | 05:30 PM | 9.50     |
| Alfaro De Arrellano, E | Supervisor | 3/17/2019 06:20 AM | 11:00 AM | 11:30 AM |          |          |         |       |         |       | 04:40 PM | 9.83     |
| Alfaro De Arrellano, E | Supervisor | 3/18/2019 07:20 AM | 11:00 AM | 11:30 AM | 06:40 PM | 07:20 PM |         |       |         |       | 08:40 PM | 12.17    |
| Alfaro De Arrellano, E | Supervisor | 3/19/2019 07:40 AM | 11:00 AM | 11:40 AM | 05:40 PM | 07:00 PM |         |       |         |       | 08:10 PM | 10.50    |
| Alfaro De Arrellano, E | Supervisor | 3/20/2019 07:30 AM | 11:00 AM | 11:30 AM |          |          |         |       |         |       | 05:40 PM | 9.67     |
| Alfaro De Arrellano, E | Supervisor | 3/21/2019 06:50 AM | 11:00 AM | 11:40 AM |          |          |         |       |         |       | 05:10 PM | 9.67     |
| Alfaro De Arrellano, E | Supervisor | 3/22/2019 06:50 AM | 11:00 AM | 11:40 AM | 05:30 PM | 06:10 PM |         |       |         |       | 08:00 PM | 11.83    |
| Alfaro De Arrellano, E | Supervisor | 3/23/2019 07:00 AM | 11:10 AM | 11:50 AM |          |          |         |       |         |       | 05:10 PM | 9.50     |
| Alfaro De Arrellano, E | Supervisor | 3/24/2019 09:00 AM |          |          |          |          |         |       |         |       | 11:40 AM | 2.67     |
| Alfaro De Arrellano, E | Supervisor | 3/25/2019 06:50 AM | 12:00 PM | 12:40 PM | 05:30 PM | 06:10 PM |         |       |         |       | 07:30 PM | 11.33    |
| Alfaro De Arrellano, E | Supervisor | 3/26/2019 06:30 AM | 12:00 PM | 12:40 PM |          |          |         |       |         |       | 06:00 PM | 10.83    |
| Alfaro De Arrellano, E | Supervisor | 3/27/2019 07:00 AM | 11:10 AM | 12:10 PM |          |          |         |       |         |       | 06:10 PM | 10.17    |
| Alfaro De Arrellano, E | Supervisor | 3/28/2019 06:00 AM | 12:00 PM | 12:40 PM |          |          |         |       |         |       | 05:50 PM | 11.17    |
| Alfaro De Arrellano, E | Supervisor | 3/29/2019 06:00 AM | 12:50 PM | 01:40 PM |          |          |         |       |         |       | 05:50 PM | 11.00    |
| Alfaro De Arrellano, E | Supervisor | 3/30/2019 06:00 AM | 12:10 PM | 01:00 PM |          |          |         |       |         |       | 05:50 PM | 11.00    |
| Alfaro De Arrellano, E | Supervisor | 3/31/2019 10:30 AM |          |          |          |          |         |       |         |       | 02:10 PM | 3.67     |
| Alfaro De Arrellano, E | Supervisor | 4/1/2019 06:20 AM  | 01:10 PM | 01:40 PM |          |          |         |       |         |       | 06:30 PM | 11.67    |
| Alfaro De Arrellano, E | Supervisor | 4/2/2019 06:40 AM  | 01:50 PM | 02:30 PM |          |          |         |       |         |       | 07:10 PM | 11.83    |
| Alfaro De Arrellano, E | Supervisor | 4/3/2019 06:20 AM  | 12:10 PM | 12:40 PM |          |          |         |       |         |       | 06:40 PM | 11.83    |
| Alfaro De Arrellano, E | Supervisor | 4/4/2019 06:00 AM  | 12:40 PM | 01:10 PM |          |          |         |       |         |       | 06:20 PM | 11.83    |
| Alfaro De Arrellano, E | Supervisor | 4/5/2019 06:20 AM  | 11:40 AM | 12:10 PM | 06:30 PM | 07:10 PM |         |       |         |       | 07:20 PM | 11.83    |
| Alfaro De Arrellano, E | Supervisor | 4/6/2019 06:10 AM  | 11:30 AM | 12:10 PM |          |          |         |       |         |       | 05:40 PM | 10.83    |
| Alfaro De Arrellano, E | Supervisor | 4/7/2019 06:20 AM  | 12:00 PM | 12:40 PM |          |          |         |       |         |       | 05:40 PM | 10.67    |
| Alfaro De Arrellano, E | Supervisor | 4/8/2019 06:20 AM  | 11:40 AM | 12:10 PM |          |          |         |       |         |       | 06:10 PM | 11.33    |
| Alfaro De Arrellano, E | Supervisor | 4/9/2019 08:00 AM  | 01:30 PM | 02:10 PM |          |          |         |       |         |       | 06:30 PM | 9.83     |
| Alfaro De Arrellano, E | Supervisor | 4/10/2019 06:30 AM | 11:30 AM | 12:20 PM |          |          |         |       |         |       | 05:40 PM | 10.33    |
| Alfaro De Arrellano, E | Supervisor | 4/11/2019 06:30 AM | 11:40 AM | 12:20 PM |          |          |         |       |         |       | 05:40 PM | 10.50    |
| Alfaro De Arrellano, E | Supervisor | 4/12/2019 06:30 AM | 12:00 PM | 12:40 PM |          |          |         |       |         |       | 05:40 PM | 10.50    |
| Alfaro De Arrellano, E | Supervisor | 4/13/2019 06:30 AM | 11:40 AM | 12:30 PM |          |          |         |       |         |       | 05:40 PM | 10.33    |
| Alfaro De Arrellano, E | Supervisor | 4/14/2019 06:40 AM | 11:50 AM | 12:40 PM |          |          |         |       |         |       | 05:20 PM | 9.83     |
| Alfaro De Arrellano, E | Supervisor | 4/15/2019 06:30 AM | 11:30 AM | 12:20 PM |          |          |         |       |         |       | 05:40 PM | 10.33    |
| Alfaro De Arrellano, E | Supervisor | 4/16/2019 06:40 AM | 12:10 PM | 01:10 PM |          |          |         |       |         |       | 03:00 PM | 7.33     |
| Alfaro De Arrellano, E | Supervisor | 4/17/2019 06:40 AM | 12:10 PM | 12:50 PM |          |          |         |       |         |       | 05:40 PM | 10.33    |

# EXHIBIT 4

## **MEAL AND REST BREAK POLICY**

Rest periods are required to be taken by all employees during each shift worked in accordance with state and federal laws. All employees are required to take their Rest Periods as set forth below. Consecutive work shifts will not be scheduled less than 8 hours apart.

For every full 4-hour period an employee is scheduled to work, one paid 10-minute rest break is required after the 2nd hour of each 4-hour period that employee is scheduled to work. This rest break will be considered time worked and paid accordingly.

If an employee is scheduled to work more than 6 hours in a single shift, one meal/lunch break of a minimum of 30-minutes is required before the start of the 5th hour of work in a single shift. If an employee is scheduled to work more than 10 hours in a single shift, a second lunch break of a minimum of 30-minutes is required after the before the start of the 10th of work. Meal/lunch breaks are on the employee's time and not paid.

**Meal and Rest Periods are mandatory. Failure to adhere to the policy above will result in discipline up to and including termination.**

## **WORK DAY START TIMES**

The work day for all day shift employees begins at 12:00 a.m. The work day for all night shift employees begins at 12:00 p.m.

# EXHIBIT 5

*Aleman v. Moonlight Packing Corporation et al.*  
**Detailed Time and Task Summary** – David Yeremian

| Tasks Performed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Atty Hours Est. | Date range              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-------------------------|
| <u>1. Pre-Filing and Investigation Tasks</u> <ul style="list-style-type: none"> <li>• Initial intake review</li> <li>• Interview client, review client documents</li> <li>• Research defendant corporate form and litigation history</li> <li>• Review retainer agreement and case initiating documents</li> <li>• Research applicable law</li> <li>• Conduct factual and legal research into the merits of Plaintiff's claims.</li> <li>• Conduct multiple conferences discussing the facts and allegations with Plaintiff, addressing conduct of litigation, time frame for events and initial actions to commence litigation</li> <li>• Confer with staff re same</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 6               | April 2020 – May 2020   |
| <u>2. Drafting and Filing the Class Action Complaint, Drafting and Sending the LWDA Letter Notice, Drafting First Amended Complaint adding PAGA Claim</u> <ul style="list-style-type: none"> <li>• Confer with NH re claims and issues to focus on</li> <li>• Review and revise class action complaint</li> <li>• Review and revise Private Attorneys General Act Notice Letter</li> <li>• Review first amended complaint adding PAGA claim.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 8               | May 2020 – June 2020    |
| <u>3. Initial conferences and correspondence with Defendants' counsel, Initial scheduling conference and case initiation requirements, and Initial Formal Discovery</u> <ul style="list-style-type: none"> <li>• Review case initiation documents and conformed copies and review initial Case Management Conference order and draft notice of CMC</li> <li>• Review Plaintiff's documents</li> <li>• Conduct teleconferences and review correspondence regarding claims and Defendants' operations and the case and claims</li> <li>• Confer with NH re procedural issues and discovery</li> <li>• Review correspondences to Defendants' counsel regarding case and conference and appearance and discovery.</li> <li>• Conduct further investigation into the claims, and conferences with client regarding same and documents supporting allegations.</li> <li>• Review and revise Form Interrogatories – General, Form Interrogatories – Employment, Special Interrogatories, and Request for Production and notice of deposition of Defendants' Person(s) Most Knowledgeable</li> <li>• Review Belaire-West notice.</li> </ul> | 15              | July 2020 – August 2020 |
| <u>4. Potential ADR Discussions and initial informal discovery requests</u> <ul style="list-style-type: none"> <li>• Confer with Defendants' counsel and exchange e-mails regarding decision to proceed with mediation and status of discovery and how to approach in light of agreement.</li> <li>• Discuss informal discovery requests with NH</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 3               | July 2020 – August 2020 |

**Detailed Time and Task Summary** – David Yeremian

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |    |                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|-----------------------------|
| <ul style="list-style-type: none"><li>• Review initial informal discovery requests</li><li>• Discuss mediator options and timing with NH and defense counsel</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |    |                             |
| <p><u>5. Complete Informal Discovery, Mediation Preparation, and Conduct Mediation and further discovery meet and confer</u></p> <ul style="list-style-type: none"><li>• Review correspondence to Defendants’ counsel and mediator regarding mediation and scheduling</li><li>• Complete informal discovery and production of documents and Class Member’s data</li><li>• Review all production and file documents and policy documents and compile key exhibits and documents for mediation; confer with NH re same</li><li>• Confer and correspond with Defendants’ counsel regarding Class Member’s data and numbers agreed upon and extrapolated for mediation</li><li>• Complete and draft calculations of Defendants’ potential liability exposure and summarize defenses to each and alleged bases for reduction in calculated numbers</li><li>• Review applicable case law and research regarding payment of wages, meal, and rest breaks, wage statements, final wages, reimbursement of business expenses, and PAGA</li><li>• Review and revise mediation brief addressing background and procedure, discovery completed, and each of Plaintiff’s claims, and the facts and law supporting them, and research and calculate potential estimated damages and penalties exposure</li><li>• Attend mediation</li><li>• Complete conferences with Defendants’ counsel regarding Settlement and general terms</li></ul> | 24 | August 2020 – November 2020 |
| <p><u>6. Finalizing Settlement Agreement and Terms</u></p> <ul style="list-style-type: none"><li>• Review and revise Memorandum of Understanding</li><li>• Review stipulation to continue case management conference to complete Settlement Agreement</li><li>• Reviewed long form Settlement Agreement and conduct multiple conferences and correspondence with Defendants’ counsel regarding detailed terms and revisions</li><li>• Multiple correspondence and conferences with Defendants’ counsel regarding settlement terms and revisions and additions</li><li>• Reviewed and revised Class Member’s Notice, Exclusion Form, and Dispute Form and e-mails regarding same</li><li>• Conduct multiple conferences with Plaintiff regarding Settlement and terms and responding to his questions and concerns</li><li>• Review, revise and approve final settlement agreement</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 4  | November 2020 – March 2021  |
| <p><u>7. Motion for Preliminary Approval</u></p> <ul style="list-style-type: none"><li>• Review and revise motion for preliminary approval of the Settlement and supporting documents and declarations</li><li>• Conduct multiple conferences and exchange correspondence with</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 25 | March 2021 – present        |

**Detailed Time and Task Summary** – David Yeremian

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|--|
| Defendants' counsel regarding MPA documents and revisions as required                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                |  |
| <ul style="list-style-type: none"><li>• Review Court's order denying Plaintiff's motion for preliminary approval</li><li>• Confer with client and Defendants' counsel regarding Settlement and terms after reviewing the Court's tentative ruling granting preliminary approval</li><li>• Review and revised second motion for preliminary approval of the settlement and supporting documents</li><li>• Conduct conferences with Plaintiff's expert, client, and Defendants' counsel regarding Plaintiff's revised motion for preliminary approval</li></ul> |                |  |
| <b>TOTAL:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>85 Hrs.</b> |  |

# EXHIBIT 6

## **EXHIBIT 6**

# LAFFEY MATRIX

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|                  |                      |                            | Years Out of Law School * |       |       |       |       |
|------------------|----------------------|----------------------------|---------------------------|-------|-------|-------|-------|
| Year             | Adjustmt<br>Factor** | Paralegal/<br>Law<br>Clerk | 1-3                       | 4-7   | 8-10  | 11-19 | 20 +  |
| 6/01/19- 5/31/20 | 1.0049               | \$203                      | \$372                     | \$458 | \$661 | \$747 | \$899 |
| 6/01/18- 5/31/19 | 1.0350               | \$202                      | \$371                     | \$455 | \$658 | \$742 | \$894 |
| 6/01/17- 5/31/18 | 1.0463               | \$196                      | \$359                     | \$440 | \$636 | \$717 | \$864 |
| 6/01/16- 5/31/17 | 1.0369               | \$187                      | \$343                     | \$421 | \$608 | \$685 | \$826 |
| 6/01/15- 5/31/16 | 1.0089               | \$180                      | \$331                     | \$406 | \$586 | \$661 | \$796 |
| 6/01/14- 5/31/15 | 1.0235               | \$179                      | \$328                     | \$402 | \$581 | \$655 | \$789 |
| 6/01/13- 5/31/14 | 1.0244               | \$175                      | \$320                     | \$393 | \$567 | \$640 | \$771 |
| 6/01/12- 5/31/13 | 1.0258               | \$170                      | \$312                     | \$383 | \$554 | \$625 | \$753 |
| 6/01/11- 5/31/12 | 1.0352               | \$166                      | \$305                     | \$374 | \$540 | \$609 | \$734 |
| 6/01/10- 5/31/11 | 1.0337               | \$161                      | \$294                     | \$361 | \$522 | \$589 | \$709 |
| 6/01/09- 5/31/10 | 1.0220               | \$155                      | \$285                     | \$349 | \$505 | \$569 | \$686 |
| 6/01/08- 5/31/09 | 1.0399               | \$152                      | \$279                     | \$342 | \$494 | \$557 | \$671 |
| 6/01/07-5/31/08  | 1.0516               | \$146                      | \$268                     | \$329 | \$475 | \$536 | \$645 |
| 6/01/06-5/31/07  | 1.0256               | \$139                      | \$255                     | \$313 | \$452 | \$509 | \$614 |
| 6/1/05-5/31/06   | 1.0427               | \$136                      | \$249                     | \$305 | \$441 | \$497 | \$598 |
| 6/1/04-5/31/05   | 1.0455               | \$130                      | \$239                     | \$293 | \$423 | \$476 | \$574 |
| 6/1/03-6/1/04    | 1.0507               | \$124                      | \$228                     | \$280 | \$405 | \$456 | \$549 |
| 6/1/02-5/31/03   | 1.0727               | \$118                      | \$217                     | \$267 | \$385 | \$434 | \$522 |
| 6/1/01-5/31/02   | 1.0407               | \$110                      | \$203                     | \$249 | \$359 | \$404 | \$487 |
| 6/1/00-5/31/01   | 1.0529               | \$106                      | \$195                     | \$239 | \$345 | \$388 | \$468 |
| 6/1/99-5/31/00   | 1.0491               | \$101                      | \$185                     | \$227 | \$328 | \$369 | \$444 |
| 6/1/98-5/31/99   | 1.0439               | \$96                       | \$176                     | \$216 | \$312 | \$352 | \$424 |
| 6/1/97-5/31/98   | 1.0419               | \$92                       | \$169                     | \$207 | \$299 | \$337 | \$406 |
| 6/1/96-5/31/97   | 1.0396               | \$88                       | \$162                     | \$198 | \$287 | \$323 | \$389 |

|                |        |      |       |       |       |       |       |
|----------------|--------|------|-------|-------|-------|-------|-------|
| 6/1/95-5/31/96 | 1.032  | \$85 | \$155 | \$191 | \$276 | \$311 | \$375 |
| 6/1/94-5/31/95 | 1.0237 | \$82 | \$151 | \$185 | \$267 | \$301 | \$363 |

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., McDowell v. District of Columbia, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

\* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

\*\* The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

# EXHIBIT 7