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Attorneys for Plaintiffs and on behalf of the Proposed Class

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

RUDOLPH OLLARSABA and AGUSTIN
SELVA, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

PUMPMAN, LLC, a California Limited
Liability Company; PUMPMAN
INTERMEDIATE HOLDINGS, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVDS2008889

*[Assigned to Hon. Judge David Cohn, Dept S26,
for all purposes]*

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

Hearing

Date: August 4, 2021

Time: 10:00 a.m.

Dept.: S26

Complaint filed: May 29, 2020

I, Brian J. Mankin, state and declare:

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

1 **COUNSEL’S EXPERIENCE**

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

6 3. I have handled approximately 400 to 500 employee vs. employer litigation
7 matters during my 20 years in practice. Over the last 15 years, my practice has almost entirely
8 consisted of representing employees, the majority of which has included class action and
9 representative action wage and hour matters. In total, I have handled over 200 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

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

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

26 6. Over the last few years, I have been consecutively selected by my peers as a
27 “Super Lawyer” in Employment Litigation.
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8. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel's application for a reasonable award of attorneys' fees not to exceed one-third of the Settlement Amount, Class Counsel's litigation expenses not to exceed \$15,000, settlement administrator costs not to exceed \$3,000, PAGA penalties of \$20,000 (of which \$15,000 or 75% will be paid to the LWDA and the remaining \$5,000 or 25% will be paid pro-rata to the Aggrieved Employees), and Service Payments not to exceed \$10,000 for each Plaintiff. After subtracting the agreed-upon deductions from the Gross Settlement Amount, it is estimated that \$205,333.34 will be available to the Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 395,000.00
Attorneys' Fees (1/3)	\$ 131,666.66
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 3,000.00
PAGA Penalties	\$ 20,000.00
Class Representatives' Service Award	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 205,333.34

1 9. Assuming a class size of 33 Class Members, the average payment to each class
2 member will be approximately \$6,222 each (\$205,333.34 / 33). Of course, the actual payment
3 will be calculated on a pro-rata basis according to the number of Workweeks Worked by each
4 Class Member. Assuming an estimated 4,200 weeks worked, each Workweek will have a value
5 of approximately \$48.89 on average. In addition, Aggrieved Employees (*i.e.*, Class Members
6 that worked during the PAGA Period) will receive a pro rata share of the \$5,000 PAGA Penalties
7 (accounting for 25% of the total \$20,000 allocation).

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

12 **PROCEDURAL BACKGROUND**

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

20 12. After being retained by Plaintiff Ollarsaba, we sent a May 20, 2020, letter to
21 Defendants requesting the production of his personnel file and timekeeping records in order to
22 further evaluate his wage and hour claims. That same day, we submitted a letter to the California
23 Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private
24 Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**.

25 13. On May 29, 2020, we filed a putative class and representative action Complaint in
26 the Court alleging claims arising out of Defendants' alleged: (1) Failure to Pay Minimum Wages;
27 (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods; (4) Failure to Provide
28 Rest Breaks; (5) Failure to Reimburse Business Expenses; (6) Failure to Timely Pay Wages Each

1 Period and Upon Separation of Employment; (7) Failure to Provide Accurate Itemized Wage
2 Statements; (8) Unfair and Unlawful Competition, and (9) related PAGA claims.

3 14. Thereafter, Mr. Selva was added as a Plaintiff to the action. First, we submitted
4 an amended letter to the LWDA to exhaust Plaintiff Selva's PAGA claim, which is attached
5 hereto as **Exhibit D**. Then on July 21, 2020, we filed a First Amended Complaint that added
6 Plaintiff Selva as a class representative.

7 15. Defendant fully denied the allegations. However, before incurring significant
8 costs, the parties agreed to explore an early resolution through mediation. In preparation for
9 mediation, the Parties agreed to an informal discovery process where information was exchanged
10 relating to the applicable policies and procedures, payroll and time keeping records, size of the
11 class, and potential value of the case. The sampling included employee wage statements,
12 timekeeping records and payroll data that enabled Plaintiff and our expert to fully evaluate the
13 potential claims and extrapolate the data to the entire class. During this process, Plaintiff and his
14 counsel analyzed, researched, and investigated the potential claims of all similarly situated
15 employees.

16 16. On March 25, 2021, the Parties participated in a full-day mediation with Hon.
17 Jonathan Cannon (Ret.), who is a full-time mediator with extensive experience in employment
18 matters. At the conclusion of the mediation, Judge Cannon issued a mediator's proposal calling
19 for a class-wide settlement for \$395,000. The Parties accepted the mediator's proposal, and
20 memorialized the terms of the settlement in a long-form Settlement Agreement. The Parties now
21 seek the Court's preliminary approval of the Settlement.

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

23 17. The putative Class in this case consists of approximately 33 similarly situated
24 individuals and Plaintiffs alleged numerous wage and hour violations on behalf of the Class
25 Members, with a particular emphasis on three alleged violations.

26 18. First, Plaintiffs claimed that Defendants failed to pay proper overtime due to its
27 practice of failing to include all required compensation when determining the "regular rate of
28 pay" used for overtime calculations. Plaintiffs argued that this Class-wide failure resulted in

1 unpaid overtime and other derivative penalties.

2 19. Second, Plaintiffs argued that they and the Class members were often denied
3 compliant meal and rest breaks due to the nature of the work. However, Defendants argued that it
4 provided and made available meal and rest breaks to all employees, and any employee who did
5 not take a meal or rest break did so entirely of his or her own volition. In this regard, Defendants
6 argued that Class Members were given so much latitude with regards to whether and how they
7 took their breaks, that a fact-finder would have to determine for each Class Member whether a
8 break was taken, missed and why, and why a break was noncompliant/nonexistent, because if it
9 was by the employee's choice, no liability attaches to the Defendant.

10 20. Third, Plaintiffs alleged that Defendants' wage statements failed to accurately
11 state "total hours worked" each period in violation of Labor Code § 226(a)(2). However,
12 Defendants argued that there was no such violation and, even if a violation was found, penalties
13 would not apply under Labor Code § 226(e) because Class members did not suffer "injury" and,
14 further, any such violations were not "knowing and intentional."

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

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

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

26 23. The settlement will result in a fair payment to each class member based on the
27 number of Weeks Worked by each Class Member. As set forth hereinabove, Plaintiffs and their
28 counsel have diligently investigated the claims and defenses on behalf of the class members and

1 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
2 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
3 further litigation described above and weighing them against the benefits of a known
4 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
5 agreed to is believed to be in the best interest of Plaintiffs and the Class, and is a fair and
6 reasonable resolution of the claims alleged.

7 24. Plaintiffs' counsel brought to bear a great deal of experience in negotiating the
8 settlement of this case. As detailed herein, Plaintiffs' counsel engaged in the necessary discovery
9 and investigation, making it possible to exercise informed judgment throughout the settlement
10 process, including significant document review (e.g. documents pertaining to Defendants'
11 policies and procedures, personnel documents, among others), and conducted an extensive
12 analysis of the detailed class-wide data provided by Defendants.

13 25. Based on my experience in other cases, including wage and hour matters, I
14 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
15 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
16 settlement at this time is in the best interests of the class. The settlement provides each class
17 member with compensation for the alleged violations when viewed in relation to the costs and
18 risks inherent in obtaining class certification and proceeding to trial.

19 26. Plaintiffs' counsel, as well as Defendants' counsel, fully endorse the terms and
20 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

21 27. Of course, the settlement amount represents a compromise figure, taking into
22 account the various risks surrounding class certification and the merits of Defendants' asserted
23 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
24 members, with no reversion to Defendants.

25 **PLAINTIFFS' REQUESTED ENHANCEMENT PAYMENTS**

26 28. Plaintiffs each seek an enhancement payment of \$10,000, which I believe is fair
27 and warranted given the time and effort they devoted to this case. Their efforts included
28 providing factual background for the Class and PAGA complaint; providing documents and

1 information about Defendants' compensation plan; participating in phone calls to discuss
2 litigation and settlement strategy; making themselves available throughout the litigation to assist
3 with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and
4 reviewing the settlement documents. The Class Representatives also assumed significant risk in
5 bringing this litigation—namely, had they lost, they could have been ordered to pay Defendant's
6 costs.

7 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF**
8 **THE REQUESTED FEES AND COSTS**

9 29. As set forth above, I have handled over 200 class and representative actions, have
10 been appointed as class counsel and have successfully resolved over half of those class actions,
11 and many others remain pending and will successfully resolve in the future.

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

16 31. It is my experience that attorney fee awards of one-third of a common fund
17 settlement is the standard in California. In this case, Plaintiffs' counsel agreed to seek one-third
18 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
19 is further warranted because it is within the range of reasonableness typically awarded in class
20 actions. My firm's costs are reasonably capped at \$15,000 and will be based on the actual
21 amount of costs incurred at the time of final approval.

22 **SETTLEMENT ADMINISTRATOR**

23 32. The parties request that the Court appoint ILYM to serve as the Settlement
24 Administrator. ILYM is experienced in administering class action settlements, and has provided
25 a flat-fee proposal to administer this settlement for \$3,000.

26 **CONCLUSION**

27 33. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance
28 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit E**.

1 34. For the foregoing reasons, it is respectfully requested that the Court grant
2 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
3 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
4 payment to the Class Representatives.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct. Executed on June 3, 2021, at Riverside, California.

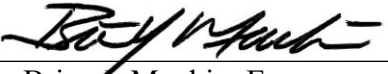
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8 By: 
9 Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendants Pumpman, LLC, and Pumpman Intermediate Holdings, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

RUDOLPH OLLARSABA and AGUSTIN
SELVA, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

PUMPMAN, LLC, a California Limited
Liability Company; PUMPMAN
INTERMEDIATE HOLDINGS, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVDS2008889

*[Assigned to Honorable David Cohn, Dept.
S26, for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiffs Rudolph Ollarsaba and Agustin Selva, individually and on behalf of all others
3 similarly situated, and Defendants Pumpman, LLC, and Pumpman Intermediate Holdings, LLC,
4 (“Defendants”) and is approved by their respective counsel of record, subject to the terms and
5 conditions hereof and the Court’s approval.

6 **A. Definitions**

7 1. “Action” or “Lawsuit” means and refers to the case entitled *Ollarsaba et al. v.*
8 *Pumpman, LLC, and Pumpman Intermediate Holdings, LLC., et al.*, San Bernardino County
9 Superior Court, Case No. CIVDS2008889.

10 2. “Aggrieved Employee(s)” means Plaintiff and all current and former non-exempt
11 employees of Defendants and who worked at the Baldwin Park location in California at any time
12 during the PAGA Period.

13 3. “Settlement Agreement” or “Agreement” shall mean this Class Action Settlement
14 Agreement and Release of Claims.

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

17 5. “Class Data” means a complete list that Defendants will diligently and in good
18 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
19 which shall include, for each Settlement Class Member, the individual’s full name; last known
20 address; telephone number; Social Security Number; total Weeks Worked during the PAGA
21 Period; and the total Weeks Worked during the Class Period.

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

24 7. “Class Representatives” or “Plaintiffs” means and refers to Rudolph Ollarsaba
25 and Agustin Selva.

26 8. “Complaint” refers to the operative first amended complaint on file alleging class
27 and representative PAGA claims, filed in the San Bernardino County Superior Court on May 29,
28 2020, and amended on September 25, 2020, in the matter of *Rudolph Ollarsaba and Agustin*

1 *Selva v. Pumpman, LLC, et al., et al.*, San Bernardino County Superior Court Case No.
2 CIVDS2008889.

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

5 10. “Defendants” means and refers to Pumpman, LLC, and Pumpman Intermediate
6 Holdings, LLC.

7 11. “Defendants’ Counsel” or “Defense Counsel” means and refers to Adriana Cara
8 of Fisher Broyles, LLP.

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

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

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

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

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

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

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

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

5 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
6 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant
7 to Paragraph 69(c) below.

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

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

14 23. “PAGA Released Claims” by the Aggrieved Employees upon Final Approval of
15 the Settlement means any and all PAGA claims that Plaintiffs alleged against the Released
16 Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in
17 Plaintiffs’ Complaint and in Plaintiffs’ LWDA notice letter(s), including all PAGA claims
18 seeking civil penalties that is premised upon (1) failure to pay minimum wages, (2) failure to pay
19 overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure
20 to reimburse business expenses, (6) failure to failure to timely pay wages each period and upon
21 separation of employment, (7) failure to provide accurate itemized wage statements, and (8) all
22 other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code
23 §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint. The time period governing
24 the PAGA Released Claims shall be any time during the PAGA Period. The PAGA Released
25 Claims do not release any Aggrieved Employee’s claims for wages or statutory penalties.

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

1 25. “Parties” or “Settling Parties” mean Plaintiffs, the Settlement Class, and
2 Defendants, collectively.

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

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

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

17 29. “Released Claims” by the Participating Class Members upon Final Approval of
18 the Settlement will include any and all claims stated in the Complaint and those based solely
19 upon the facts in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay
20 overtime wages, (3) failure to provide compliant meal periods, (4) failure to provide compliant
21 rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each
22 period and upon separation of employment, and (7) failure to provide accurate itemized wage
23 statements, (8) unfair and unlawful competition, and (9) all other claims for statutory penalties
24 based on the facts or claims alleged in the Complaint.

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

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

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

6 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 69(a)
7 below.

8 34. “Service Payment” or “Service Award” means the amount approved by the Court
9 to be paid to Class Representatives Rudolph Ollarsaba and Agustin Selva, in addition to their
10 Individual Settlement Payments as a Participating Class Member.

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

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

23 37. “Settlement Class” or “Covered Position” consists of all current and former non-
24 exempt employees of Defendants and who worked at the Baldwin Park location in California at
25 any time during the Class Period.

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

28 39. “Work Weeks” or “Weeks Worked” for each Settlement Class Members means

any and all weeks during the Class Period in which the Settlement Class Member was employed by Defendants at the Baldwin Park location in a Covered Position and worked at least one shift during the week.

B. General Terms

40. Plaintiff filed a class and representative PAGA action complaint in the Court on May 29, 2020 against Defendants and Does 1 through 10. Plaintiff subsequently amended the Complaint on September 25, 2020. The operative Complaint alleges class and representative PAGA claims, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide compliant meal periods, (4) failure to provide compliant rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period and upon separation of employment, and (7) failure to provide accurate itemized wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code §17200 *et seq.*, and (9) related claims under PAGA.

41. Defendants deny Plaintiffs' claims and allegations and contend that the Action is not suitable for class certification or manageable as a class or representative action.

42. The Class Representatives believe they can proceed with their representative and class claims, that the Action is meritorious, and that class certification is appropriate.

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

1 various defenses asserted by Defendants, and numerous potential appellate issues.

2 44. On March 25, 2021, Plaintiffs and Defendants participated in mediation before
3 Hon. Jonathan Cannon (ret.), a retired judge and highly experienced wage and hour class action
4 mediator. The matter resolved at mediation pursuant to a mediator's proposal.

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

9 46. Stipulation for Class Certification. For settlement purposes only, Defendants will
10 stipulate that the Settlement Class Members described herein who do not submit a Request for
11 Exclusion from the Settlement Class may be conditionally certified as a settlement class. This
12 stipulation to certification is in no way an admission that class action certification is proper and
13 shall not be admissible in this or in any other action except for the sole purposes of enforcing this
14 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
15 stipulation to class certification as part of the Settlement shall become null and void *ab initio* and
16 shall have no bearing on, and shall not be admissible in connection with, the issue of whether or
17 not certification would be appropriate in a non-settlement context. Defendants expressly reserve
18 their rights and declare that they would continue to oppose class certification and the substantive
19 merits of the case should the Court decline to issue Final Approval. Plaintiffs expressly reserve
20 their rights and declares that they will continue to pursue class certification and a trial should the
21 Court decline to issue Final Approval.

22 **C. Terms of Settlement**

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

24 (a) Maximum Settlement Amount: The Parties agree to settle this Action for
25 Three Hundred and Ninety-Five Thousand Dollars (\$395,000) ("the Maximum Settlement
26 Amount"). The Maximum Settlement Amount is the maximum amount that will be paid, and
27 includes Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service
28 Payment to the Class Representatives, all Settlement Administration Costs, and PAGA Penalties.

Defendants shall separately pay the employers' share of their payroll tax obligations, which shall be reported through the Settlement Administrator.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Maximum Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payments to the Class Representatives as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court reduces the attorneys' fees, litigation costs, Service Awards, or Settlement Administrator Costs, the difference shall be placed in the Net Settlement Amount and allocated to the Settlement Class.

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

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

1 Settlement Administrator shall proportionally increase the Individual
2 Settlement Payment for each Participating Class Member according to the
3 number of Work Weeks worked, so that the amount actually distributed to the
4 Settlement Class equals 100% of the Net Settlement Amount.

5 (d) Allocation of Individual Settlement Payments: The Individual Settlement
6 Payments will be allocated based on the allegations in the Action as follows: one-third (33.34%)
7 will be allocated as wages subject to withholding of all applicable local, state and federal taxes;
8 and the remaining two-thirds will be allocated equally between interest (33.33%) and as penalties
9 (33.33%) (pursuant to, e.g., California Labor Code sections 203, 210, 226, 2699) from which no
10 taxes will be withheld. The Settlement Administrator will issue to each Participating Class
11 Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the
12 wage allocation and a Form 1099 with respect to the penalties and interest allocations.

13 (e) Service Payments to Class Representatives: The amount, if any, awarded
14 to the Class Representatives as a Service Payment will be set by the Court in its discretion, not to
15 exceed \$10,000 each, in exchange for the services Plaintiffs performed on behalf of the Class
16 and for entering into the general and expansive release discussed hereinafter. Defendants agree
17 not to oppose this request. The Service Payment to Plaintiffs will be paid out of the Maximum
18 Settlement Amount. The Class Representatives will be issued IRS Form 1099 in connection with
19 this payment. Plaintiffs shall be solely and legally responsible to pay any and all applicable
20 taxes on this payment. The Parties agree that any amount awarded as the Service Payment to
21 Plaintiffs less than the requested amount shall not be a basis for Class Counsel to void this
22 Settlement Agreement. Should the Court approve a lesser amount for the Service Payment, the
23 difference shall be added to the Net Settlement Amount to be distributed to the Participating
24 Class Members.

25 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
26 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
27 Maximum Settlement Amount (\$131,666.66), plus reasonable litigation costs not to exceed
28 \$15,000 ("Attorney's Fees and Cost Award"). Defendants agree not to oppose any contention by

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

10 (g) Settlement Administration Costs: The fees and other charges of the
11 Settlement Administrator will be paid from the Maximum Settlement Amount, not to exceed
12 \$3,000 unless approved by all Parties and the Court.

13 (h) PAGA Penalties: The Parties agree that \$20,000 is allocated to PAGA
14 Penalties, and is to be paid from the Maximum Settlement Amount, subject to Court approval.
15 Of this amount, \$15,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
16 the Private Attorney General Act of 2004 ("PAGA") and \$5,000 (25%) will be paid to the
17 Aggrieved Employees on a Work Week basis, which will be treated entirely as civil penalties
18 and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice
19 to the LWDA of the Settlement.

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

1 regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner
2 required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement.
3 If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after
4 the date of this Agreement, the processes set forth in this Section may be modified in a manner to
5 bring Defendants into compliance with any such changes. Plaintiffs and Participating Class
6 Members understand and agree that they will be solely responsible for the payment of any taxes
7 and penalties assessed on their respective payments described herein and will defend, indemnify,
8 and hold Defendants free and harmless from and against any claims resulting from treatment of
9 such payments as non-taxable damages.

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

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

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

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

24 50. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable, and
25 adequate, and will so represent same to the Court.

26 **D. Release by Plaintiffs, the Aggrieved Employees, and the Settlement Class**

27 51. Upon entry of the Final Approval Order and Defendants funding of the Settlement
28 Amount, and except as to such rights or claims as may be created by this Settlement Agreement,

1 the Settlement Class (other than those who submit a valid Request for Exclusion) and each
2 member of the Settlement Class who does not timely opt-out, will forever completely release and
3 discharge the Released Parties from the Released Claims for the Release Period.

4 52. Upon entry of the Final Approval Order and Defendants funding of the Settlement
5 Amount, the State of California and Aggrieved Employees shall completely release and
6 discharge the Released Parties from the PAGA Released Claims for the PAGA Period.

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

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

15 55. Class Representatives, on behalf of themselves and the Settlement Class,
16 acknowledge and agree that the claims for unpaid wages and unreimbursed expenses in the
17 Action, and untimely payment of wages in the Action, are disputed, and that the payments set
18 forth herein constitute payment of all sums allegedly due to them. Class Representatives, on
19 behalf of themselves and the Settlement Class, acknowledge and agree that California Labor
20 Code Section 206.5 are not applicable to the Parties hereto. Section 206.5 provides in pertinent
21 part as follows:

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

25
26 **E. Release by Class Representatives**

27 56. Except for Plaintiff Ollarsaba's separate individual claims for discrimination,
28 retaliation, harassment and wrongful termination ("Ollarsaba's Individual Claims," which shall

1 be released through a separate individual agreement), as a material inducement to Defendants to
2 enter into this Settlement Agreement, Class Representatives do hereby, for themselves and for
3 their respective spouses, heirs, successors, beneficiaries, devisees, legatees, executors,
4 administrators, trustees, conservators, guardians, personal representatives, and assigns forever
5 and completely release and discharge the Released Parties from any and all charges, complaints,
6 claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of
7 action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory
8 penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and
9 costs) of any nature whatsoever, from the beginning of time through the execution of this
10 Agreement, whether known or unknown, suspected or unsuspected, including but not limited to
11 all claims arising out of, based upon, or relating to Class Representatives' employment with
12 Defendants or the remuneration for or termination of such employment (collectively, the "Class
13 Representatives' Claims").

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

24 58. Class Representatives agree that there is a risk that any injury that they may have
25 suffered by reason of the Released Parties' relationship with them might not now be known, and
26 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
27 Agreement, might possibly become progressively worse, and that as a result thereof further
28 damages may be sustained. Nevertheless, Class Representatives agree to forever and fully

1 release and discharge the Released Parties, and understand that by the execution of this
2 Settlement Agreement no further claims for any such injuries that existed at the time of the
3 execution of this Settlement Agreement may ever be asserted by Class Representatives with
4 respect to claims arising in the time period from the beginning of time to the execution of this
5 Settlement Agreement.

6 59. Class Representatives warrant and represents that they have not filed any
7 administrative charge with any federal, state or local government agency (*e.g.*, EEOC, DFEH,
8 NLRB, SEC, *etc.*) as of the date they executed this Settlement Agreement. Class Representatives
9 acknowledge and understand that such warranty and representation is a material term to
10 receiving a Service Award.

11 60. Class Representatives expressly waive and relinquish all rights and benefits
12 afforded by Section 1542 of the Civil Code of the State of California and do so understanding
13 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
14 Code of the State of California states:

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
16 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
17 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
18 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
19 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

20 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
21 full and complete release and discharge of all parties, Class Representatives and Class Counsel
22 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
23 without limitation, all claims that Class Representatives knew of, as well as all claims that they
24 do not know or suspect to exist in their favor against the Released Parties, or any of them, for the
25 time period from the beginning of time to the execution of this Settlement Agreement, and that
26 this Settlement Agreement contemplates the extinguishment of any such Class Representatives'
27 claims. Notwithstanding the above, the general release by Class Representatives shall not extend
28 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims

that may not be released by law.

F. Interim Stay of Proceedings

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

G. Notice Process

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

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

64. Class Data. Within fifteen (15) business days after entry of the Preliminary

1 Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The
2 Settlement Administrator will run a check of the Class Members' addresses against those on file
3 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
4 Settlement Administrator will remain confidential, shall be used solely to administer the
5 Settlement, and will not be used or disclosed to anyone, except as required by applicable tax
6 authorities, pursuant to Defendants' express written consent, or by order of the Court. Although
7 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
8 Counsel from communicating with Class Members regarding the Action and Settlement.

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

14 66. Returned Notices. The Settlement Administrator will take steps to ensure that the
15 Notice is received by all Settlement Class Members, including utilization of the National Change
16 of Address Database maintained by the United States Postal Service to review the accuracy of
17 and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for
18 whom an updated address is located within ten (10) calendar days following both the Settlement
19 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
20 shall be identical to the original Notice, except that it shall notify the Class Member that the
21 exclusion (opt-out) request or objection must be returned by the later of the Notice Response
22 Deadline or fifteen (15) days after the remailing of the Notice.

23 67. Disputes Regarding Information on Notices. Class Members are deemed to
24 participate in the Settlement, unless they opt-out. The Notice will inform Class Members of
25 his/her estimated Individual Settlement Payment and the number of Weeks Worked during the
26 Class Period. Class Members may dispute their Weeks Worked if they feel they should be
27 credited with more Work Weeks than Defendants' records show by timely submitting evidence
28 to the Settlement Administrator. Defendants' records will be presumed determinative absent

1 reliable evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the
2 evidence submitted by the Class Member and provide the evidence submitted to Class Counsel
3 and Defense Counsel who agree to meet and confer in good faith about the evidence to determine
4 the Class Member's actual number of Work Weeks and estimated Individual Settlement
5 Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the
6 dispute to the Settlement Administrator to render a final decision. Class Members will have until
7 the Notice Response Deadline to dispute Weeks Worked, object or opt out, unless extended by
8 the Court. In the event that the Settlement Administrator increases the number of Weeks
9 Worked for any Settlement Class Member, then the Settlement Administrator will recalculate the
10 Individual Settlement Payments; accordingly, in no event will Defendants be required to increase
11 the Maximum Settlement Amount.

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

15 69. Settlement Class Members' Rights. Each Settlement Class Member will be fully
16 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or
17 request exclusion from the Settlement. The Notice will inform the Settlement Class Members of
18 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
19 in accordance with the following guidelines:

20 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
21 Member, other than Plaintiffs, may request to be excluded from the Settlement Class by
22 submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before
23 the Notice Response Deadline. The Request for Exclusion should state:

24
25 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
26 CLASS IN THE OLLARSABA V. PUMPMAN LLC LAWSUIT.
27 I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
28 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY

1 MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

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

14 All Parties and their counsel, including Defendants’ respective owners, officers and
15 managers, shall not encourage or solicit opt-outs or objections, directly or indirectly, through any
16 means.

17 (b) Binding Effect on Final Settlement Class Members. Except for those
18 Settlement Class Members who exclude themselves in compliance with the procedures set forth
19 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
20 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
21 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
22 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
23 reasonableness, and adequacy of the Settlement.

24 (c) Objections to Settlement. Any Settlement Class Member, other than
25 Plaintiffs, may object to the terms of this Agreement. To object, a Settlement Class Member
26 shall inform the Settlement Administrator, in writing, of his or her objection which must be
27 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
28 objection shall include the objecting Settlement Class Member’s full name, address, telephone

1 number, and dates of employment with Defendants, the case name and number, the basis for the
2 objection, including any legal support and each specific reason in support of the objection, as
3 well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class
4 Member is represented by counsel, the name and address of his or her counsel. The Settlement
5 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
6 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
7 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
8 Participating Class Member who files an objection remains eligible to receive monetary
9 compensation from the Settlement. Plaintiffs and Defendants shall not be responsible for any
10 fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any
11 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
12 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
13 and properly intervening or filing a motion to vacate the judgment under Code of Civil
14 Procedure § 663.

15 (d) Failure to Object. Any Settlement Class Member who desires to object
16 but fails to timely submit a written objection or in person objection at the Final Approval
17 Hearing waives any right to object and will be foreclosed from making any objection to this
18 Settlement. Any Settlement Class Member who does not timely and properly become a party of
19 record by intervening or filing a motion to vacate the judgment waives any and all rights to
20 appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
21 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California
22 Code of Civil Procedure section 473, and extraordinary writs.

23
24 (e) Responses to Objections. Counsel for the Parties may file a response to
25 any objections submitted by objecting Settlement Class Members at least five (5) court days
26 before the date of the Final Approval Hearing.

27 (f) Settlement Class Members will have until the Notice Response Deadline
28 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The

1 Settlement Administrator shall disclose jointly to Class Counsel and Defendants' counsel what
2 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
3 request of Class Counsel or Defense Counsel.

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

14 70. Funding of the Settlement Amount. Defendants shall make a one-time deposit
15 into the QSF of the Maximum Settlement Amount (including the employers' share of the payroll
16 taxes) by the later of December 1, 2021 or fifteen (15) calendar days after the Effective Date.
17 Once Defendants have complied with their obligation set forth in this paragraph, they shall be
18 deemed to have satisfied all of the terms and conditions of this Agreement, shall be entitled to all
19 the protections afforded it under the Agreement, and shall have no further obligations under the
20 Agreement, regardless of what occurs with respect to the further administration of the
21 Settlement. The Settlement Administrator (and not Defendants) shall issue the applicable W-2s
22 and IRS Form 1099 reflecting all payments to the Class Members.

23
24 71. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
25 payment into the QSF, the Settlement Administrator will mail the Individual Settlement
26 Payments to the Participating Class Members, the payment to Class Counsel for the Attorneys'
27 Fees and Costs Award, any Service Payment to the Class Representatives, the payment to the
28 LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs.

1 72. Deadline for Cashing Settlement Checks. Participating Class Members shall have
2 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks.
3 If any Participating Class Member's check is not cashed within that period, the check will be
4 void and a stop-payment will be issued, and the Settlement Administrator shall issue the
5 unclaimed funds to the California State Controller's Office in the name of the Class Member.
6 The release will be binding upon all Participating Class Members who do not cash their checks
7 within the 180-day period. In the event that any settlement check is returned to the Settlement
8 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
9 business days of receipt of the returned settlement check, perform a skip trace to locate the
10 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
11 located by these means, the Administrator will have ten (10) business days to re-issue the check.
12 Neither Defendants, Defense Counsel, Class Counsel, Plaintiffs, nor the Settlement
13 Administrator will have any liability for lost or stolen settlement checks, forged signatures on
14 settlement checks, or unauthorized negotiation of settlement checks. Without limiting the
15 foregoing, in the event a Participating Class Member notifies the Settlement Administrator that
16 he or she believes that a settlement check has been lost or stolen, the Settlement Administrator
17 shall immediately stop payment on such check. If the check in question has not been negotiated
18 prior to the stop payment order, the Settlement Administrator will issue a replacement check.

19 73. No person shall have any claim against Defendants (or their designees),
20 Defendants' Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on
21 mailings, distributions, payments or reports made in accordance with or pursuant to this
22 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
23 Agreement.

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

25 74. Promptly after execution of this Settlement Agreement, Plaintiffs will move the
26 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
27 accomplishing the following:

- 28 (a) Scheduling the Final Approval Hearing on the issue of whether this

Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on fees, costs and the Service Payments;

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

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

(d) Preliminarily approving this Settlement; and

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

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

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

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

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

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

76. Final Judgment. Class Counsel shall provide the Settlement Administrator with a copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator shall mail a postcard setting forth the terms of the Final Judgment as requested by the Parties.

J. Voiding the Agreement

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

1 78. If the Settlement is voided or fails for any reason, any costs incurred by the
2 Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise
3 specified in this Agreement.

4 **K. Other Terms**

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

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

10 81. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
11 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
12 such documents and to take such other action as may reasonably be necessary to implement the
13 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
14 best efforts, including all efforts contemplated by this Settlement Agreement and any other
15 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
16 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
17 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
18 Defendants and Defendants' Counsel, take all necessary steps to secure the Court's preliminary
19 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
20 Defendants' Counsel with copies of the Preliminary Approval Motion and Final Approval
21 Motion for review at least three business days prior to the filing deadline.

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

26 83. No Admission. Defendants deny any and all liability to Plaintiffs and/or any
27 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
28 that might have been asserted in this Action. Nonetheless, Defendants wish to settle and

1 compromise the matters at issue in the Complaint to avoid further substantial expense and the
2 inconvenience and distraction of protracted and burdensome litigation. Defendants also have
3 taken into account the uncertainty and risks inherent in litigation, and without conceding any
4 infirmity in the defenses that they have asserted or could assert against Plaintiffs, have
5 determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and
6 upon the terms and conditions set forth in this Agreement.

7 84. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
8 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
9 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
10 of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into
11 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
12 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
13 and it, along with all related documents such as the notices, and motions for preliminary and
14 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
15 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
16 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation
17 for class certification as part of this Settlement Agreement is for settlement purposes only and if,
18 for any reason the settlement is not approved, the stipulation will be of no force or effect.

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

23
24 To the Settlement Class:

25 Brian Mankin
26 *brian@LMLfirm.com*
27 Lauby Mankin Lauby LLP
28 4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendants:

Adriana Cara
adriana.cara@fisherbroyles.com
FISHER BROYLES, LLP
2244 Faraday Avenue, PMB
Carlsbad, CA 92008
Tel: 760-448-5669 | Fax: 760-448-5687

86. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement. Plaintiffs and Defendants expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

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

89. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiffs and Defendants agree to seek the help of the mediator to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own

attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendants.

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

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

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

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

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

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

Dated: May 18, 2021

PLAINTIFF AND CLASS REPRESENTATIVE:


Rudolph Ollarsaba (May 18, 2021 07:16 PDT)

Rudolph Ollarsaba

Dated: May __, 2021

PLAINTIFF AND CLASS REPRESENTATIVE:

Agustin Selva

Dated: May __, 2021

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiff

Dated: May __, 2021

PLAINTIFF AND CLASS REPRESENTATIVE:

Rudolph Ollarsaba

Dated: May 28, 2021

PLAINTIFF AND CLASS REPRESENTATIVE:

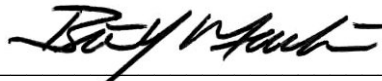


Agustín Calazan selva (May 28, 2021 14:06 PDT)

Agustin Selva

Dated: May 28, 2021

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

1 Dated: May 22, 2021

DEFENDANT:
PUMPMAN, LLC

3 Donald C Devine
4 By: Donald C Devine
5 Title: Chief Executive Officer

6 Dated: May 22, 2021

DEFENDANT:
PUMPMAN INTERMEDIATE HOLDINGS, LLC

8 Donald C Devine
9 By: Donald C Devine
10 Title: Chief Executive Officer

11 Dated: May __, 2021

DEFENDANTS' COUNSEL:
FISHER BROYLES, LLP

13 Adriana Cara
14 Adriana Cara, Esq.
15 Attorneys for Defendants

16 END OF DOCUMENT

EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS ACTION

Rudolph Ollarsaba and Agustin Selva v. Pumpman, LLC, et al.
Superior Court of the State of California, County of San Bernardino
Case No. CIVDS2008889

To: all current and former non-exempt employees of Defendants Pumpman, LLC, and Pumpman Intermediate Holdings, LLC, (collectively, “Pumpman”) and who worked at the Baldwin Park location in California at any time between May 29, 2016 and [REDACTED], 2021 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2021 to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement you are estimated to receive approximately **\$INSERT AMOUNT** as your share of the Net Settlement Amount should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the Net Settlement Amount may be more or less than this estimate. Your estimate is based on the number of eligible weeks you worked at Pumpman’s Baldwin Park location in California between May 29, 2016 and [REDACTED], 2021 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement, you may “opt-out” of the settlement. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2021 (see Section V for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment, but you will preserve your right to pursue the Released Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement.
OBJECT	If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2021 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF WORK WEEKS	If you believe that your number of Work Weeks listed above is incorrect, you may contact the Settlement Administrator to dispute your Work Week calculation (see Section IV for more details on how to dispute your Work Weeks). Pumpman’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your Work Week calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Ollarsaba et al. v. Pumpman, LLC, et al.*, San Bernardino County Superior Court Case No. CIVDS2008889 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Pumpman's records show that you were employed at its Baldwin Park location in California as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between May 29, 2016 and [REDACTED], 2021 ("Class Period"). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

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

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

II. What is this lawsuit about?

On May 29, 2020, Plaintiffs and Class Representatives Rudolph Ollarsaba and Agustin Selva, through her attorneys ("Class Counsel"), filed a class and representative action complaint against Pumpman for alleged wage and hour violations on behalf of all current and former non-exempt employees who were employed by Pumpman at the Baldwin Park location in California at any time since May 29, 2016. Plaintiffs allege that Pumpman violated various Labor Code sections by failing to pay wages for all hours worked, provide all required meal and rest breaks, timely pay final wages, provide accurate and complete wage statements, and other related claims.

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

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

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

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

III. Who are the Class Members' attorneys?

Attorneys for the Class Members:

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

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by Pumpman at the Baldwin Park location in California at any time between May 29, 2016 and [REDACTED], 2021 (the "Settlement Class"). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, ("Participating Class Members") will be mailed Settlement checks and in exchange be bound by the Settlement and release of certain wage and penalty claims against Pumpman.

Without admitting any wrongdoing, Pumpman has agreed to pay \$395,000 (the "Maximum Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Maximum Settlement Amount:

Settlement Administration Costs. The Court has approved ILYM to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$3,000 will be paid from the Maximum Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (PAGA) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$20,000 of the Total Maximum Settlement Amount will be allocated to Plaintiffs' claim under the Private Attorneys General Act of 2004 ("PAGA"). Of this amount, \$15,000 will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining \$5,000 will be divided between all Aggrieved Employees on a Workweek basis. Aggrieved Employees includes "all current and former non-exempt employees of Defendants and who worked at the Baldwin Park location in California at any time during the period of May 29, 2019 through [REDACTED], 2021." Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$5,000 allocation:

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

Service Payment to Class Representatives. Class Counsel will ask the Court to award Class Representatives a Service Payment in the amount of \$10,000 each to Rudolph Ollarsaba and Agustin Selva to compensate them for their service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representatives also may receive a share of the Settlement as a Class Member.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Maximum Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third (\$131,666.66) of the common fund Maximum Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$15,000 for the costs Class Counsel incurred in connection with the Lawsuit.

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

For each Settlement Class Member, the Weeks Worked at Pumpman's Baldwin Park location during the Class Period will be calculated from Pumpman's records. Pumpman's records indicate that you worked for [TOTAL WORK WEEKS] Work Weeks in California during the Class Period of May 29, 2016, through [REDACTED], 2021. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2021, with documentation

to establish the number of weeks you claim to have actually worked for Pumpman at the Baldwin Park location in California between May 29, 2016 and [REDACTED], 2021 (excluding any leaves of absence). **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

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

Allocation and Taxes. One-third (33.34%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (66.66%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, it will be reported on IRS Form 1099 as income. Participating Class Members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Pumpman and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments. Participating Class Members will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments. Accordingly, Participating Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Court approves the proposed Settlement and enters Judgment, and Pumpman funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement, and will bar them from bringing certain claims against Pumpman. Specifically, the Participating Class Members will fully release and discharge the Defendants and their past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, subsidiaries, divisions, affiliates, attorneys, successors and assigns, of all claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide compliant meal periods, (4) failure to provide compliant rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period and upon separation of employment, and (7) failure to provide accurate itemized wage statements, (8) unfair and unlawful competition, and (9) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 *et seq.* based on the facts or claims alleged in the Complaint. These released claims and damages are hereinafter referred to as "Released Claims." The time period governing these Released Claims shall be at any time from May 29, 2016 and [REDACTED], 2021 ("Release Period").

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

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

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

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility

of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

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

- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2021 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

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

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2021. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any payments under this Settlement; and (3) will not be bound by this Settlement, or the Judgment.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object, you must submit a written objection stating your full name, address, telephone number, dates of employment at Pumpman, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection, and any legal support for each objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2021. Objections that do not include all required information, or that are not submitted timely, will not be considered. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2021, at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2021. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

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

VI. What is the effect of the settlement?

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

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representatives on [REDACTED], 2021 at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

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

VIII. How can I get additional information?

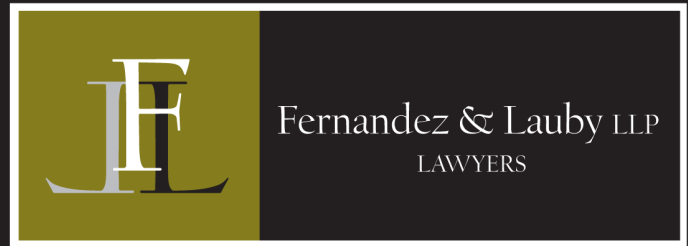
This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement (the Settlement Agreement) at Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino,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

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion is [REDACTED], 2021. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2021. These deadlines will be strictly enforced.

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

EXHIBIT “C”



May 20, 2020

Sent Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

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

Please see attached Service List

Re: PAGA Civil Penalty Claim
Rudolph Ollarsaba v. Pumpman, LLC, et al.

To the Labor and Workforce Development Agency (“LWDA”), Pumpman, LLC, Pumpman Intermediate Holdings, LLC, Mr. DiMeglio, and Mr. Devine:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Rudolph Ollarsaba (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Pumpman, LLC, Pumpman Intermediate Holdings, LLC and/or any affiliated entities, and/or the respective owner of said companies (Mr. Jerry DiMeglio, and Mr. Donald Devine) (collectively the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately August 2019 through March 2020. Claimant alleges that, at all relevant times, he and all other nonexempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and violations to which Claimant was subjected during his employment.

At all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Additionally, at all relevant times, the Company paid Claimant and the Aggrieved Employees on an hourly basis but also paid additional earned compensation in the form of bonuses, “on-call” pay, and similar pay. However, during workweeks where the Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation, the Company failed to include the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay. Moreover, the Company paid Claimant and the Aggrieved

Employees on an hourly basis but used multiple rates within the same workweek. However, during workweeks where the Aggrieved Employees earned more than one rate of pay, the Company failed to pay proper overtime because the overtime was based solely on 1.5 times the base rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay. As a result of these violations and others, the Company failed to pay proper minimum and overtime wages to Claimant and the Aggrieved Employees.

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

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Additionally, Claimant was often not permitted to leave the premises for his rest breaks, in violation of California law. Also, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, expenses related to acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone and text message.. The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, and meal and rest period premiums. And the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Pumpman, LLC, Pumpman Intermediate Holdings, LLC, Mr. DiMeglio, and Mr. Devine and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Pumpman, LLC, Pumpman Intermediate Holdings, LLC, Mr. DiMeglio, and Mr. Devine acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Pumpman, LLC, Pumpman Intermediate Holdings, LLC, Mr. DiMeglio, and Mr. Devine are an integrated enterprise and should be treated as a single employer because Pumpman, LLC, Pumpman Intermediate Holdings, LLC, Mr. DiMeglio, and Mr. Devine share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief Pumpman, LLC, Pumpman Intermediate Holdings, LLC, Mr. DiMeglio, and Mr. Devine share common management, a centralized control of labor operations, and common ownership or financial control.

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

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

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

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

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

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

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

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

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

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

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

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

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

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

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

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimant and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan

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

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

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

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to multiple violations. For example, the Company’s uniform wage statements listed line-items for regular hours, overtime hours, and double time hours, and then summed all hours into a “Total Work Hrs” line-item. However, this is inaccurate because the Company’s wage statements specifically state that the overtime hours were actually worked in the prior period (e.g. “Correction: 9.67 OT Hours for 2/17/20 – 2/23/20” appears on the paystub for the period 2/24/20 – 3/1/20). Additionally, on the occasions that an Aggrieved Employee worked a prevailing wage job during a pay period, the Company’s practice was to issue two wage statements for the same pay period, one of which would list the prevailing wage hours and the other that would list the non-prevailing wage hours. As a result of these practices, the Company’s wage statements failed to accurately state the total hours worked in the period.

Moreover, due to the violations discussed above, the Company routinely failed to calculate the proper overtime rate, leading to a violation of § 226(a)(9) for failing to state the accurate overtime rate of pay, and the Company’s related underpayment of minimum, regular, and overtime wages also resulted in the failure to accurately state gross wages earned, all deductions, and net wages earned. As a result of these violations, civil penalties may be assessed under Labor Code §§ 226.3 and/or 2699, and Claimant may recover attorneys’ fees and costs.

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

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by

the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

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

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

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

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

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

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

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

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

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an

order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

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

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

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: PJC@fernandezlauby.com

www.California-EmploymentLawyers.com

Service List

Pumpman, LLC
600 Madison Avenue
New York, NY 10022

Pumpman, LLC
5020 Bleecker St.
Baldwin Park, CA 91706

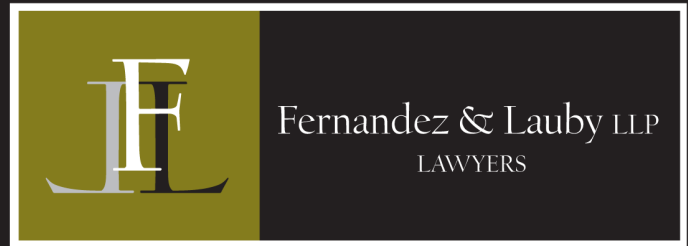
Pumpman Intermediate Holdings, LLC
PO Box 837
Saddle Brook, NJ 07663

Pumpman Intermediate Holdings, LLC
250 Pehle Ave., Suite 110
Saddle Brook, NJ 07663

Mr. Jerry DiMeglio
15 Dickinson Road
Darien, CT 06820

Mr. Donald Devine
151 Post Kennel Road
Far Hills, NJ 07931

EXHIBIT “D”



July 20, 2020

Sent Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

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

Please see attached Service List

Re: PAGA Civil Penalty Claim (Supplemental/Amended Notice)
Rudolph Ollarsaba v. Pumpman, LLC, et al.
LWDA Case No. LWDA-CM-787340-20

To the Labor and Workforce Development Agency (“LWDA”), Pumpman, LLC, Pumpman Intermediate Holdings, LLC, Mr. DiMeglio, and Mr. Devine:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as Supplemental/Amended notification of the PAGA civil penalty claim of aggrieved employees Rudolph Ollarsaba and Agustin Selva (“Claimants”), on behalf of the State of California and all Aggrieved Employees, against their former employer(s), Pumpman, LLC, Pumpman Intermediate Holdings, LLC and/or any affiliated entities, and/or the respective owner of said companies (Mr. Jerry DiMeglio, and Mr. Donald Devine) (collectively the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant Ollarsaba was employed by the Company from approximately August 2019 through March 2020. Claimant Selva was employed by the Company from approximately 2018 through March 2020. Claimants allege that, at all relevant times, they and all other nonexempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and violations to which Claimants were subjected during his employment.

At all relevant times, Claimants and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Additionally, at all relevant times, the Company paid Claimants and the Aggrieved Employees on an hourly basis but also paid additional earned compensation in the form of bonuses, “on-call” pay, and similar pay. However, during workweeks where the Aggrieved Employees worked overtime hours and earned additional nondiscretionary compensation, the Company failed to include the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5 times

the base rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay. Moreover, the Company paid Claimants and the Aggrieved Employees on an hourly basis but used multiple rates within the same workweek. However, during workweeks where the Aggrieved Employees earned more than one rate of pay, the Company failed to pay proper overtime because the overtime was based solely on 1.5 times the base rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay. As a result of these violations and others, the Company failed to pay proper minimum and overtime wages to Claimants and the Aggrieved Employees.

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

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Also, the Company required Claimants and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, expenses related to acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone and text message.. The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, and meal and rest period premiums. And the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

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

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

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

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

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

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

Here, the Company required Claimants and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimants and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan

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

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

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

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to multiple violations. For example, the Company’s uniform wage statements listed line-items for regular hours, overtime hours, and double time hours, and then summed all hours into a “Total Work Hrs” line-item. However, this is inaccurate because the Company’s wage statements specifically state that the overtime hours were actually worked in the prior period (e.g. “Correction: 9.67 OT Hours for 2/17/20 – 2/23/20” appears on the paystub for the period 2/24/20 – 3/1/20). Additionally, on the occasions that an Aggrieved Employee worked a prevailing wage job during a pay period, the Company’s practice was to issue two wage statements for the same pay period, one of which would list the prevailing wage hours and the other that would list the non-prevailing wage hours. As a result of these practices, the Company’s wage statements failed to accurately state the total hours worked in the period.

Moreover, due to the violations discussed above, the Company routinely failed to calculate the proper overtime rate, leading to a violation of § 226(a)(9) for failing to state the accurate overtime rate of pay, and the Company’s related underpayment of minimum, regular, and overtime wages also resulted in the failure to accurately state gross wages earned, all deductions, and net wages earned. As a result of these violations, civil penalties may be assessed under Labor Code §§ 226.3 and/or 2699, and Claimants may recover attorneys’ fees and costs.

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

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by

the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

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

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

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

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

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

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

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

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an

order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

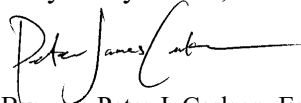
Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties,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

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

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimants become aware of any additional claims for Labor Code violations related to employment and/or other employees of the Company, they reserve the right to add new claims by amending this claim letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



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EXHIBIT “E”