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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT – SPRING STREET COURTHOUSE

JASON MITCHINER, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

MOVE SALES, INC. DBA REALTOR.COM;
MOVE, INC; and DOE 1 through 2, inclusive,

Defendants.

CASE NO. 20STCV23141

Judge: Hon. Carolyn B. Kuhl
Dept: 12

**AMENDED CLASS SETTLEMENT
AGREEMENT**

AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement is entered into and effective as of the dates of signature of this agreement, by and between: (1) the Settlement Class Representative in the above-entitled proceeding, for himself and on behalf of the Settlement Class; and (2) Defendants. All capitalized terms used herein are as defined in Section 2 below or as defined elsewhere in this Agreement.

1. RECITALS

1.1 This Settlement Agreement is entered into with reference to the following facts:

1.2 The Settlement Class Representative believes that the Settled Claims have merit and that the evidence developed to date supports his claims. However, the Settlement Class Representative and Settlement Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the claims through trial, appeals, and ancillary actions. The Settlement Class Representative and Settlement Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties, complexities, and delays inherent in such litigation. The Settlement Class Representative and Settlement Class Counsel also are mindful of the inherent problems of proof in establishing, and possible defenses to, the claims asserted in this Action. The Settlement Class Representative and Settlement Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon the Settlement Class. Based upon their evaluation, the Settlement Class Representative and Settlement Class Counsel have determined that the Settlement set forth in this Agreement is in the best interest of the Settlement Class and is fair, adequate, and reasonable.

1.3 Defendants have denied and continue to deny all liability with respect to any and all of the Settled Claims or the facts alleged in support thereof and has denied and continues to deny all charges of wrongdoing or liability against them arising out of or relating to any conduct, acts, or omissions alleged or that could have been alleged in the Action. Defendants' willingness to resolve the Settled Claims on the terms and conditions embodied in this Agreement is based on, among other things: (i) the time and expense associated with litigating the Settled Claims through trials and any appeals; (ii) the benefits of resolving the Settled Claims, including limiting further

1 expense, inconvenience and distraction, disposing of burdensome and protracted litigation, and
2 permitting Defendants to conduct their business unhampered by the distractions of continued
3 litigation; and (iii) the uncertainty and risks inherent in any litigation.

4 **1.4** The Parties to this Agreement recognize that the claims against Defendants are
5 strongly disputed, and the Parties wish to resolve completely and totally all Settled Claims against
6 Defendants and the other Released Parties.

7 **1.5** **NOW THEREFORE**, subject to Court approval, as hereinafter provided, it is
8 hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this
9 Agreement, and upon the entry by the Court of a final order approving the Settlement and directing
10 the implementation of the terms and conditions of the Settlement as set forth in this Agreement,
11 this Action shall be settled and compromised upon the terms and conditions contained herein.

12 **2. DEFINITIONS**

13 As used in this Agreement, in addition to any definitions elsewhere in this Agreement, the
14 following terms shall have the meanings set forth below:

15 **2.1** **“Action”** means and refers to *Jason Mitchiner v. Move Sales, Inc. et al*, Los
16 Angeles County Superior Court Case No. 20STCV23141.

17 **2.2** **“Agreement”** means and refers to this Class Settlement Agreement.

18 **2.3** **“Claims Administrator”** means and refers to a mutually-agreeable claims
19 administrator with adequate security protocols, subject to Court approval, which will perform the
20 notice and administer the Settlement Fund as described in this Agreement. A declaration from the
21 Claims Administrator regarding the Claims Administrator’s qualifications and experience will be
22 submitted to the Court with Plaintiff’s motion for preliminary approval of this settlement.

23 **2.4** **“Class Notice”** means and refers to a mutually-agreeable class notice approved by
24 the Court.

25 **2.5** **“Complaint”** means and refers to the operative complaint in the Action.

26 **2.6** **“Court”** means and refers to the Superior Court of California, County of Los
27 Angeles.

28 **2.7** **“Defendants”** means and refers to Move Sales, Inc. and Move, Inc.

1 **2.8 “Employment Taxes”** means and refers to all amounts which an employer is
 2 required by state or federal law to withhold from wages paid to employees on behalf of the
 3 employee including, without limitation, withholding of federal and state income taxes and payment
 4 of the employee’s portion of FICA, Medicare taxes, and California State Disability Insurance.

5 **2.9 “Exempt Settlement Class”** means and refers to all Persons who were exempt
 6 employees of Defendants in California during the Release Period. Excluded from the Exempt
 7 Settlement Class are all Persons who properly and timely elect to opt out pursuant to Section 7.

8 **2.10 “Non-Exempt Settlement Class”** means and refers to all Persons who were non-
 9 exempt employees of Defendants in California during the Release Period. Excluded from the
 10 Non-Exempt Settlement Class are all Persons who properly and timely elect to opt out pursuant to
 11 Section 7.

12 **2.11 “Final Approval Order”** means and refers to the Court’s judgment and order
 13 granting final approval of the class settlement following the motion as set forth in Section 5.3.
 14 This Final Approval Order shall constitute approval pursuant to California Rules of Court 3.769(a)
 15 and a judgment pursuant to California Rules of Court 3.769(h).

16 **2.12 “Final Effective Date”** means and refers to the date at which Defendants provide
 17 the remainder of the Total Settlement Payment to the Claims Administrator which shall be: (1) if
 18 there were any objectors: ten (10) calendar days after the expiration of the period for filing any
 19 appeal, writ, or other appellate proceeding challenging the Final Approval Order and Judgment
 20 has elapsed without any appeal, writ or other appellate proceeding having been filed; or, (2) if an
 21 appeal or writ is filed, ten (10) calendar days after the dismissal or final resolution of the appeal or
 22 writ. In this regard, it is the intention of the Parties that the Settlement shall not become effective
 23 until the Final Approval Order and Judgment is completely final and there is no further recourse
 24 by an appellant or objector who seeks to contest the Settlement. If no objection is made to the
 25 settlement, the Final Effective Date will be ten (10) calendar days after the date the Court has
 26 entered the Final Approval Order and Judgment.

27 **2.13 “LWDA”** means and refers to the Labor & Workforce Development Agency.

28 **“Notice Program”** means and refers to the notice procedures set forth in Section 6.

1 **2.14 “Opt Out Period”** means and refers to the period of time between the
 2 commencement of the Notice Program and an agreed date certain forty-five (45) calendar days
 3 later during which members of the Settlement Class may exercise the right to opt out of the
 4 Settlement Class pursuant to the provisions of Section 7.

5 **2.15 “PAGA Letter”** means and refers to the letter sent by or on behalf of the
 6 Settlement Class to the LWDA regarding the allegations in the Complaint, specifically including
 7 the June 15, 2020, letter from Settlement Class Counsel to the LWDA regarding the Settlement
 8 Class Representative.

9 **2.16 “Parties”** means and refers to the Settlement Class Representative, for himself and
 10 on behalf of the Settlement Class, and Defendants.

11 **2.17 “Person”** means and refers to any individual, proprietorship, corporation, personal
 12 loan-out corporation, partnership, association, trustee, unincorporated association, or any other
 13 type of legal entity, except a governmental entity.

14 **2.18 “Preliminary Approval Order”** means and refers to the Court’s order granting
 15 preliminary approval of this Agreement and approval of the Notice Program following the motion
 16 as set forth in Section 5.1. This Preliminary Approval Order shall constitute an order for and
 17 setting a final approval hearing pursuant to California Rules of Court 3.769(d) and 3.769(e).

18 **2.19 “Release Period”** means and refers to: (a) with respect to the Non-Exempt
 19 Settlement Class, the time period between April 6, 2016 and November 19, 2021, except as for
 20 claims under Labor Code Section 2698 *et seq.* (“PAGA”); (b) with respect to the Exempt
 21 Settlement Class, the time period between March 13, 2020 and November 19, 2021, except as for
 22 claims under the PAGA; (c) with respect to the release of PAGA claims for Non-Exempt
 23 Settlement Class Members, the time period between June 15, 2019 and November 19, 2021; and
 24 (d) with respect to the release of PAGA claims for Exempt Settlement Class Members, the time
 25 period between March 13, 2020 and November 19, 2021.

26 **2.20 “Released Party” and “Released Parties”** means and refers to: (a) Defendants and
 27 each and all of Defendants’ past or present partners, parents, subsidiaries, or related entities
 28 (regardless of whether such partners, parents, subsidiaries, or related entities are individuals,

corporations, partnerships, limited partnerships, limited liability companies, or other forms of entity); (b) each and all of the predecessor or successor entities of any of those entities identified in subparagraph (a); (c) any other individuals or entities of any kind, including but not limited to any payroll companies employed or used by the Released Parties, which have been or could be alleged to be in any manner responsible (whether on an alter ego, joint employer, statutory employer, integrated enterprise, or any other theory) for any actual or alleged violations described in Section 2.30; and (d) all past and present directors, officers, representatives, insurers, agents, shareholders, partners, members, lawyers, and employees of any of the individuals or entities identified in subparagraphs (a), (b), or (c).

2.21 “Releasing Party” and “Releasing Parties” means and refers to the Settlement Class and its members, agents, partners, joint venturers, affiliates, predecessors, successors, heirs, assigns, insurers, personal loan-out corporations, and any other Persons or entities claiming by or through the Settlement Class, in their capacities as such.

2.22 “Settled Claims” means and refers, in connection with the employment of the Non-Exempt Settlement Class Members during the Release Period, to any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action, through the Release Period, which in any way arises out of, is based on, or relates in any way to the facts alleged in the Complaint, which specifically includes: (a) minimum, regular, and/or overtime wages allegedly due; (b) meal or rest periods allegedly missed, not provided, and/or denied; (c) check stubs, wage statements, documentation, information, or records provided, delivered, or maintained, or not provided, delivered, or maintained; (d) the payment, non-payment, or timeliness of payment of wages or premiums due or allegedly due; (e) record-keeping obligations; (f) the payment or non-payment of reimbursements required under California Labor Code Section 2802; (g) violation or alleged violation of California Labor Code Sections 201, 202, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, or 2802, any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of payments, check stubs or wage statements, record-keeping

obligations, and/or reimbursement of expenses; (h) attorneys' fees due or allegedly due under California Labor Code Section 218.5 or any other statute, regulation, or contractual provision; (i) any other claims that any Releasing Party has arising out of, based upon, or relating to the allegations contained in the Complaint; and (j) penalties or other payments which in any way arise out of, are based on, or relate in any way to any of the foregoing, including but not limited to penalties, premiums, or payments under California Labor Code Sections 203, 210, 226(e), 226(f), 226.3, 226.7, 558, 1174.5, 1198.5(k), or 1199, any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of payments, check stubs or wage statements, record-keeping obligations, and/or reimbursement of expenses. Without in any way limiting the foregoing, Settled Claims as to the Non-Exempt Class Members shall include all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action under statutes and regulations set forth in this Section regarding Non-Exempt Class Members, whether enforced directly or pursuant to California Business and Professions Code Section 17200, *et seq.*, or any other mechanism. **"Settled Claims"** also means and refers to in, connection with the employment of Non-Exempt Settlement Class Members who are also Settlement Aggrieved Employees, additionally all claims listed above in regards to Non-Exempt Class Members and any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, civil penalties, and causes of action, during the Release Period, under the PAGA which in any way arises out of, is based on, or relates in any way to the facts alleged in the PAGA Letter, which specifically includes: (a) minimum, regular, and/or overtime wages allegedly due; (b) meal or rest periods allegedly missed, not provided, and/or denied; (c) check stubs, wage statements, documentation, information, or records provided, delivered, or maintained, or not provided, delivered, or maintained; (d) the payment, non-payment, or timeliness of payment of wages or premiums due or allegedly due; (e) the payment or non-payment of reimbursements required under California Labor Code Section 2802; (f) violation or alleged violation of California Labor Code Sections 201, 202, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198,

1 1198.5, or 2802, any California Industrial Commission Wage Order, and/or any other statute or
 2 regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period
 3 premiums, timing of payments, check stubs or wage statements, and/or reimbursement of
 4 expenses; (g) attorneys' fees due or allegedly due under California Labor Code Section 218.5 or
 5 any other statute, regulation, or contractual provision; (h) any other claims that any Releasing
 6 Party has arising out of, based upon, or relating to the allegations contained in the PAGA Letter;
 7 and (i) penalties or other payments which in any way arise out of, are based on, or relate in any
 8 way to any of the foregoing, including but not limited to penalties, premiums, or payments under
 9 California Labor Code Sections 203, 210, 226(e), 226(f), 226.3, 226.7, 558, and 1174.5, any
 10 California Industrial Commission Wage Order, and/or any other statute or regulation regarding the
 11 payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of
 12 payments, check stubs or wage statements, and/or reimbursement of expenses. **"Settled Claims"**
 13 also means and refers, in connection with the employment of the Exempt Settlement Class
 14 Members during the Release Period, to any and all claims, liabilities, rights, demands, suits,
 15 matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action,
 16 through the Release Period, and which in any way arises out of, is based on, or relates in any way
 17 to the facts alleged in the Complaint regarding Defendants' alleged failure to provide payment or
 18 non-payment of reimbursements required under California Labor Code Section 2802, or any
 19 derivative violations thereof, including violations or alleged violation of California Labor Code
 20 Section 2802, any California Industrial Commission Wage Order Section regarding the
 21 reimbursement of expenses, and/or any other statute or regulation regarding the reimbursement of
 22 expenses; attorneys' fees due or allegedly due under California Labor Code Section 218.5 or any
 23 other statute, regulation, or contractual provision; any other claims that any Releasing Party has
 24 arising out of, based upon, or relating to the allegations contained in the Complaint regarding the
 25 reimbursements of business expenses; and penalties or other payments which in any way arise out
 26 of, are based on, or relate in any way to the reimbursement of expenses, including but not limited
 27 to penalties, premiums, or payments under any California Industrial Commission Wage Order,
 28 and/or any other statute or regulation regarding the reimbursement of expenses. Finally, **"Settled**

Claims” also means and refers to, in connection with the employment of Exempt Settlement Class Members who are also Settlement Aggrieved Employees, additionally all claims listed above in regards to Exempt Class Members and any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, civil penalties, and causes of action, during the Release Period, under the PAGA and which in any way arises out of, is based on, or relates in any way to the facts alleged in the PAGA Letter regarding Defendants’ alleged failure to provide payment or non-payment of reimbursements required under California Labor Code Section 2802, or any derivative violations thereof, including violations or alleged violation of California Labor Code Section 2802, any California Industrial Commission Wage Order Section regarding the reimbursement of expenses, and/or any other statute or regulation regarding the reimbursement of expenses; attorneys’ fees due or allegedly due under California Labor Code Section 218.5 or any other statute, regulation, or contractual provision; any other claims that any Releasing Party has arising out of, based upon, or relating to the allegations contained in the PAGA Letter regarding the reimbursements of business expenses.

2.23 “Settlement” means and refers to the settlement reflected in and to be effectuated through this Agreement.

2.24 “Settlement Class” means and refers to the Non-Exempt Settlement Class members and the Exempt Settlement Class members, as defined in this Agreement.

2.25 “Settlement Class Counsel” means and refers to Jonathan M. Lebe and Zachary Gershman of Lebe Law, APLC.

2.26 “Settlement Class Counsel’s Fees, Costs, and Expenses” means and refers to the amount awarded by the Court to Settlement Class Counsel for reasonable attorneys’ fees, costs, and expenses associated with this Action and the resolution thereof, and no other settlement, as described in Section 11.1.

2.27 “Settlement Class Member Allocation Amount(s)” means the amount to be allocated to individual Settlement Class Members as calculated under Section 10 below.

2.28 “Settlement Aggrieved Employee” means a Settlement Class Member who performed work for Defendants during the Release Period as to claims under the PAGA.

1 **2.29 “Settlement Class Representative”** means and refers to Jason Mitchiner.

2 **2.30 “Settlement Fund”** means and refers to the financial institution account established
3 to hold all proceeds from whatever source necessary to provide the benefits under this Agreement.

4 **2.31 “Settlement Termination Date”** means and refers to the date, if any, that each
5 Defendant exercises its right to terminate this Agreement.

6 **3. SETTLEMENT PURPOSES ONLY**

7 **3.1 General.** This Agreement is for settlement purposes only.

8 **3.2 Settlement Class Only.** Any certification of a preliminary or final Settlement
9 Class pursuant to the terms of this Agreement shall not constitute nor be construed as an
10 admission, and shall not be admissible in any proceeding as an admission, on the part of
11 Defendants or any other Person that this Action or any other action is appropriate for class or
12 representative treatment at trial pursuant to Rule 23 of the Federal Rules of Civil Procedure,
13 California Code of Civil Procedure Section 382, California Labor Code Section 2698, *et seq.*
14 California Business and Professions Code Section 17200, *et seq.*, or any similar class and/or
15 representative action statute or rule. This Agreement shall not prejudice Defendants’ rights or any
16 other Person’s rights to oppose certification of a litigated class or other representative treatment in
17 this Action or in any other action or proceeding. Settlement Class Counsel shall not refer to this
18 Agreement or make any argument concerning this Agreement in any contested proceeding to
19 certify a litigated class or obtain other representative treatment.

20 **3.3 Admissibility.** This Agreement, any negotiations or proceedings related hereto, the
21 implementation hereof, and any papers submitted in support of the motions for approval hereof
22 (collectively, the “Settlement Proceedings”) shall not be construed as, nor be deemed to be
23 evidence of, any admission or concession by any of the Parties or any other Person regarding
24 liability or the appropriateness of class treatment, and shall not be offered or received in evidence
25 in any action or proceeding for any purpose whatsoever; provided, however, that this Agreement
26 and the Settlement Proceedings may be presented to the Court in connection with the
27 implementation or enforcement of this Agreement, or as may be necessary or appropriate to
28 further the purposes sought to be achieved by this Agreement.

3.4 Denial of Liability. By entering into this Agreement, it is understood that Defendants do not admit and, in fact, expressly denies that: (i) it has breached any duty, obligation, or agreement; (ii) it has engaged in any illegal, tortious, or wrongful activity; (iii) it is liable to members of the Settlement Class; or (iv) any damages have been sustained by any member of the Settlement Class or by any other Person.

3.5 Amendment of the Complaint. The Parties agree to permit the Settlement Class Representative to file a Second Amended Complaint, attached as Exhibit 2, which the Settlement Class Representative shall file concurrently with the motion for preliminary approval, in order to (a) include claims under Labor Code Section 2802 and the PAGA for allegedly unreimbursed expense reimbursements with respect to the Exempt Settlement Class, and (b) re-define the purported class in the Second Amended Complaint to be the same as the Settlement Class defined herein, all subject to each of the conditions set forth below. Plaintiffs shall submit the motion for preliminary approval to the Court, which will request, among other things, that the Court adopt the Second Amended Complaint as the operative pleading in the Action. Defendants will be deemed to have denied the allegations contained in the Second Amended Complaint.

4. JURISDICTION

4.1 Continuing Jurisdiction. The Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to effectuate, consummate, and enforce the terms of this Agreement, to approve the award of attorneys' fees and costs pursuant hereto, and to supervise the administration and distribution of money from the Settlement Fund pursuant to California Code of Civil Procedure Section 664.6. Any dispute or question relating to or concerning the interpretation, enforcement, or application of this Agreement shall be presented to the Court for resolution.

5. COURT APPROVAL OF THE SETTLEMENT

5.1 Preliminary Approval. Following the execution of this Agreement, Plaintiff shall move the Court for an order, that, in accordance with this Agreement and for settlement purposes only: (i) conditionally certifies the Settlement Class; (ii) preliminarily approves this settlement; (iii) approves and authorizes the implementation of the Notice Program; (iv) approves the Claims

Administrator; (v) appoints Plaintiff as Settlement Class Representative; and (vi) appoints Plaintiff's counsel as Settlement Class Counsel. In connection therewith, Settlement Class Counsel shall submit to the Court a mutually-acceptable proposed Preliminary Approval Order.

5.2 Objection Period. Subject to Court approval, Settlement Class members shall have until an agreed date certain, which shall be forty-five (45) calendar days from the commencement of the Notice Program pursuant to Section 6, to file and serve written objections to this Agreement to the Claims Administrator. Settlement Class members may also orally voice any objections to this Agreement at the Final Approval Hearing, regardless of whether or not such Settlement Class members provided written objections to the Claims Administrator during the Objection Period.

5.3 Opt Out Period. Subject to Court approval, Settlement Class members shall have until an agreed date certain, which shall be forty-five (45) calendar days from the commencement of the Notice Program pursuant to Section 6, to opt out of the Settlement Class and this Agreement.

5.4 Final Approval. Within thirty (30) calendar days following the expiration of the Opt Out Period, if the Agreement has not been terminated in accordance with Section 8, Settlement Class Counsel shall file a motion for final approval and, in connection therewith, submit to the Court a mutually-acceptable proposed Final Approval Order.

6. CLASS NOTICE

6.1 Content. The Class Notice shall: (i) inform the Settlement Class members that, if they do not opt out from the settlement, they may be eligible to receive a monetary payment; (ii) contain a short, plain statement of the background of this action, the certification of the Settlement Class for settlement purposes, and the proposed settlement; (iii) describe the proposed settlement relief outlined in this Agreement; (iv) state that the proposed settlement benefits are contingent on the Court's entry of the Final Approval Order; (v) inform Settlement Class members that they may opt out or exclude themselves from the Settlement Class by submitting a written exclusion request no later than forty-five (45) days after the commencement of the Notice Program, except that such Settlement Class Members may not exclude themselves of the claims sought to be

resolved under the PAGA; (vi) inform Settlement Class members that, if they do not opt out, they may, if they desire, object to the proposed settlement by filing and serving a written statement of objections no later than forty-five (45) days after the commencement of the Notice Program, or by submitting such an objection to the Claims Administrator in writing no later than forty-five (45) days after the commencement of the Notice Program, or by appearing in Court at the Final Approval Hearing and voicing an oral objection; (vi) inform Settlement Class members that they may appear at the Final Approval Hearing; (vii) inform Settlement Class members that any judgment entered in this Action, whether favorable or unfavorable to the Settlement Class, will be binding on all Settlement Class members who have not excluded themselves from the Settlement Class, even if they have objected to the proposed settlement and even if they have any other claim, lawsuit, or proceeding pending against any of the Released Parties; (viii) inform Settlement Class Members of the Court's current social distancing guidelines; (ix) inform Settlement Class Members that a website regarding the settlement has been created by the Claims Administrator which will allow Settlement Class Members to track the progress of the Settlement, inform Settlement Class Members of any changes to the date or location of the Final Approval Hearing, and provide notice of final judgment on the Claim's Administrator's website.

6.2 Mailed Notice. Within twenty (20) calendar days after entry of the Preliminary Approval Order, Defendants shall submit to the Claims Administrator, in electronic form, a list of all members of the Exempt Settlement Class and the Non-Exempt Settlement Class. The list shall include each member's name, last known address, social security number, and the number of workweeks worked during the Release Period. Within fifteen (15) calendar days after receipt of the foregoing list, the Claims Administrator and/or its designee shall run a national change of address update and send by first class postage prepaid U.S. mail a copy of the Class Notice approved by the Court to each Settlement Class member.

6.3 Re-Mailed Notices. Unless the Claim Administrator receives a Class Notice returned from the United States Postal Service for reasons discussed below in this paragraph, that Class Notice shall be deemed mailed and received by the Settlement Class Members to whom it was sent five (5) calendar days after mailing. In the event that subsequent to the first mailing of a

1 Class Notice and through the duration of the Opt Out Period, that Class Notice is returned to the
2 Claim Administrator by the United States Postal Service as undeliverable, without a forwarding
3 address, the Claim Administrator shall undertake an Experian Skip Tracing with respect to the
4 Settlement Class Member to attempt to ascertain the current address of the particular Settlement
5 Class Member in question and, if such an address is ascertained, the Claim Administrator will re-
6 send the Class Notice to the newly-found address within three (3) business days of receipt of the
7 returned Class Notice. In the event that subsequent to the first mailing of a Class Notice and
8 during the duration of the Opt Out Period that Class Notice is returned to the Claim Administrator
9 by the United States Postal Service with a forwarding address for the recipient, the Claim
10 Administrator shall re-mail the notice to that address within three (3) business days of receipt of
11 the returned Class Notice, and the forwarding address shall be deemed the Updated Address for
12 that Class Member. In either event, the Class Notice shall be deemed received once it is mailed
13 for the second time. In the event that subsequent to the first mailing of a Class Notice it is
14 returned to the Settlement Administrator by the United States Postal Service as undeliverable,
15 after the Opt Out Period, the Claim Administrator shall be required to take no further action with
16 respect to that Class Notice and it shall be deemed to have been delivered. In the event the Claim
17 Administrator must re-mail any Class Notice pursuant to the provisions of this Paragraph due to
18 being returned, the Opt Out Period shall be extended by ten (10) calendar days from the date of
19 the re-mailing of the Class Notice, for those mailings. The Claim Administrator shall include a
20 cover letter with any re-mailing informing the Settlement Class Member of the re-mailing of the
21 Class Notice and extended Opt Out Period. The Settlement Administrator shall comply with
22 these skip-tracing and remailing provisions through the Opt Out Period. Compliance with the
23 procedures described in this paragraph shall constitute due and sufficient notice to Settlement
24 Class Members of the Settlement and of the Final Approval Hearing, and shall satisfy the
25 requirements of due process. Nothing else shall be required of or done by the Parties, Class
26 Counsel, counsel for Defendant, or the Claim Administrator to provide notice of the Settlement
27 and the Final Approval Hearing.

1 **6.4 Declaration of Compliance.** No later than twenty (20) calendar days after the Opt
2 Out Period (or any applicable extended Opt Out Period), the Claim Administrator shall provide
3 Class Counsel and counsel for Defendant with a declaration attesting to completion of the notice
4 process, including any attempts to obtain Updated Addresses for, and the re-sending of, any
5 returned Class Notices, including any and all other required steps (“Declaration of Compliance”),
6 which shall be filed with the Court by Class Counsel.

7 **6.5 Cost of Notice and Administration.** The cost of notice and administration for this
8 Settlement shall be paid from the Settlement Fund. Settlement Class Counsel preliminarily
9 estimates that such cost will be approximately \$15,000. If the actual cost exceeds \$15,000, the
10 amounts payable to members of the Settlement Class under Section 10 shall be reduced *pro rata* to
11 cover any excess notice and administration cost.

12 **6.6 Records of Notice.** The Claims Administrator shall keep records of all notices,
13 and the cost thereof. Promptly upon request, the Claims Administrator shall provide a sworn
14 proof of mailing.

15 **7. RIGHT OF EXCLUSION**

16 **7.1 Procedure.** Members of the Settlement Class may elect to opt out of the
17 Settlement Class and thus exclude themselves from the Action and the Settlement Class at any
18 time during the Opt Out Period, except as to the Settled Claims sought to be resolved under the
19 PAGA. To exercise the opt out right set forth in this Section 7.1, a member of the Settlement
20 Class must submit a written request to exclude himself or herself from this Agreement, which
21 request shall contain the Settlement Class member’s name, address, and telephone number. Such
22 requests for exclusion must be sent to the Claims Administrator and must be postmarked on or
23 before the end of the Opt Out Period. All Settlement Class members who do not opt out in
24 accordance with this Agreement during the Opt Out Period will be deemed to have forever waived
25 their right to opt out of the Settlement Class and will be deemed Settlement Class members for all
26 purposes under this Agreement and will be irrevocably bound by this Agreement. Any individual
27 who timely and properly opts out shall not be entitled to any individual relief under this
28 Agreement, except as for their portion of the Settlement as an aggrieved employee under the

PAGA. Further, the Opt Out Period may be extended for certain members of the Settlement Class in conjunction with Section 6.3. The Claims Administrator shall provide regular updates to Settlement Class Counsel and Mitchell Silberberg & Knupp LLP as to any and all individuals who opt out of the Settlement Class.

7.2 Withdrawal of Election to Opt Out. Prior to the entry of the Final Approval Order, any Person who has elected to opt out may withdraw that election by notifying the Claims Administrator in writing that he or she wishes to be a Settlement Class member. The Claims Administrator shall maintain records of all withdrawn opt outs and shall provide such information to Settlement Class Counsel and Mitchell Silberberg & Knupp LLP. At any time after the entry of the Final Approval Order, any Person who has elected to opt out of this Agreement may withdraw that election only upon receiving the written consent of Defendants and Court approval.

8. SETTLEMENT TERMINATION

8.1 Termination if Court Approval Is Not Obtained. This Agreement is expressly conditioned upon: (i) Court approval of this Agreement; (ii) entry of the Preliminary Approval Order in a mutually-agreeable form; and (iii) entry of the Final Approval Order in a mutually-agreeable form. If the Court declines to enter either of these Orders, or modifies (in what Defendants reasonably determine to be a material way) any aspect of this Agreement or of such Orders, each Defendant shall have the independent right to terminate this Agreement as set forth in Section 8.4. For purposes of this Section 8, a “material” modification shall include, but is not limited to, any modification to the releases to be provided, or any modification that would increase the Total Settlement Payment (defined below), except as considered by Section 9.5.

8.2 Termination if Opt Out Limit Is Exceeded. If more than fifty (50) members of the Settlement Class opt out, Defendants shall have the right to terminate this Agreement as set forth in Section 8.4.

8.3 Termination after Appeal. If a Court of Appeal on review of this Agreement and/or the Final Approval Order declares unenforceable, reverses, vacates, or modifies (in what either or both Defendants reasonably determines to be a material way) any aspect of this

1 Agreement or the Final Approval Order, each Defendant shall have the independent right to
2 terminate this Agreement as set forth in Section 8.4.

3 **8.4 Termination Procedure and Effect.** If one or both Defendants elect to terminate
4 this Agreement pursuant to Sections 8.1, 8.2, and/or 8.3, Defendant(s) may do so by giving written
5 notice to Settlement Class Counsel. Notice of termination pursuant to Section 8.1 must be given
6 within ten (10) calendar days of the act or order declining to enter the Order or modifying this
7 Agreement, unless subject to further appeal, in which case the notice must be given prior to the
8 Final Effective Date. Notice of termination pursuant to Section 8.2 must be given prior to Final
9 Approval. Notice of termination pursuant to Section 8.3 must be given prior to the Final Effective
10 Date. If Defendants terminate this Agreement pursuant to Section 8, the termination shall void all
11 of the rights, obligations, and releases under this Agreement, except for those provisions that are
12 necessary to effectuate the termination. Within fifteen (15) calendar days after notice of
13 termination, the Claims Administrator shall return all settlement payments made by Defendants
14 prior to such termination (inclusive of interest and exclusive of notice and administration costs
15 already expended). The Claims Administrator shall then invoice Defendants for any remaining
16 costs. All payments to the Claims Administrator shall be due thirty (30) calendar days after receipt
17 of the Claims Administrator's invoice.

18 **9. SETTLEMENT PAYMENTS**

19 **9.1 Funding Commitment.** Defendants shall fund the obligations of this Agreement
20 in accordance with the procedures set forth herein with a non-reversionary amount certain of One
21 Million, Four Hundred Seventy Thousand Dollars and No Cents (\$1,470,000.00) (the "Total
22 Settlement Payment" or "TSP"). The TSP shall be used to pay all of Settlement Class Counsel's
23 Fees, Costs, and Expenses, all costs of claims administration, incentive payment to the Settlement
24 Class Representative, the payment to the LWDA, and all settlement payments to Settlement Class
25 members, and the employee's share of Employment Taxes. No Released Party shall be required to
26 pay anything above or beyond the TSP, under any circumstance, as a result of this Agreement,
27 except if the escalator clause as set forth below in Section 9.7 is triggered and except that

1 Defendants shall fund the payment of the employer's share of any Employment Taxes owed on
2 amounts allocated to Settlement Class members.

3 **9.2 Funding upon Preliminary Approval.** Within ten (10) calendar days after the
4 entry of the Preliminary Approval Order, Defendants shall mail or wire to the Claims
5 Administrator the sum of 15,000 Dollars (\$15,000.00) to pay for the notice program and initial
6 administrative expenses. The time to make such payment may be extended by mutual consent of
7 the Parties.

8 **9.3 Remainder of Funding.** Defendants shall mail or wire to the Claims
9 Administrator the remainder of the TSP at the following time period: (i) if there were any
10 objectors, then within ten (10) calendar days after the expiration of the period for filing any
11 appeal, writ, or other appellate proceeding challenging the Final Approval Order and Judgment
12 has elapsed without any appeal, writ or other appellate proceeding having been filed; or, (2) if an
13 appeal or writ is filed, then within ten (10) calendar days after the dismissal or final resolution of
14 the appeal or writ; or, (3) if no objection is made to the settlement, then within ten (10) calendar
15 days after the date the Court has entered the Final Approval Order and Judgment.

16 **9.4 Payment of Settlement Class Counsel's Fees, Costs, and Expenses.** Within
17 twenty (20) calendar days after receipt of the funds described in Section 9.3 above, and at the
18 same time or directly following the providing of payments to Settlement Class members as
19 described in paragraph 10.6, the Claims Administrator shall wire the amount of Settlement Class
20 Counsel's Fees, Costs, and Expenses to Settlement Class Counsel from the Settlement Fund,
21 unless the Agreement is terminated.

22 **9.5 Increase in Class Size.** The number of Non-Exempt Settlement Class members is
23 estimated to be 507 unique individuals and with a collective total of approximately 36,030
24 workweeks. The number of Exempt Settlement Class members is estimated to be 481 unique
25 individuals and with a collective total of approximately 24,242 workweeks. Workweeks for
26 purposes of this paragraph are and shall be calculated as set forth in Section 10. If the actual
27

number of workweeks included in this settlement exceeds the aggregate of the above estimates by more than 10%, Defendants shall proportionately increase the remainder by an equal percentage.

10. PROTOCOL FOR PAYMENTS TO SETTLEMENT CLASS MEMBERS

10.1 Claims Administrator. Subject to Court approval, a reputable, experienced entity shall be the Claims Administrator. The Claims Administrator shall have the sole authority to administer the Settlement Fund, and to disburse sums from the Settlement Fund. The Claims Administrator shall carry out its duties in strict accordance with the procedures set forth in this Agreement, and any Party may move the Court to compel such compliance. The Claims Administrator shall submit monthly invoices to the Parties. With or without good cause, the Parties may jointly move the Court to replace the Claims Administrator. With good cause, any Party may, of its own accord, move the Court to replace the Claims Administrator. The Court may on its own motion replace the Claims Administrator at any time with or without cause. Except for the specific funding obligations set forth in Section 9, the Parties shall have no responsibility to members of the Settlement Class for the administration of claims or the distribution of the cash benefits under this Agreement.

10.2 Determination of Benefits. After deducting Settlement Class Counsel's Fees, Costs, and Expenses, all notice and administration costs (including a reasonable reserve for reasonably anticipated future expenses), the incentive payment to the Settlement Class Representative, the payment to the LWDA from the Settlement Fund, and the amount reserved for Settlement Aggrieved Employees as part of their release of claims under the PAGA, the remainder (the "Remainder") shall be available to pay Settlement Class members. All Settlement Class members shall receive a payment as calculated below.

10.2.1 Calculation of Points for Non-Exempt Settlement Class Members. Each Non-Exempt Settlement Class member shall receive 5 points for each workweek.

10.2.2 Calculation of Points for Exempt Settlement Class Members. Each Exempt Settlement Class member shall receive 1 point for each workweek.

10.2.3 Calculation of Monetary Benefits For Settlement Class Members. The Claims Administrator shall determine the value of each point awarded under Sections

10.2.1 and 10.2.2 by dividing the Remainder by the total points awarded to the Settlement Class. Each Settlement Class member shall be entitled to receive a Monetary Benefit equal to the number of his or her points (awarded pursuant to Sections 10.2.1. and 10.2.2) multiplied the value of each point. The Parties agree that this distribution of payments between the Non-Exempt and Exempt Settlement Class Members is fair in light of the greater number of released claims on the part of the Non-Exempt Settlement Class Members in comparison with the Exempt Settlement Class Members.

10.2.4 Calculation of Monetary Benefits for Settlement Aggrieved

Employees. In addition to the distribution of funds as described above, Settlement Aggrieved Employees will also receive the \$12,500 reserved for PAGA penalties in an amount pro rata to the workweeks that Settlement Aggrieved Employees worked during the Release Period as to claims under the PAGA, as calculated by the Claims Administrator. This Monetary Benefit will be in addition to what he or she would receive as a Settlement Class Member. The Parties agree that this distribution of payments for the Settlement Aggrieved Employees, without regard to their status as Non-Exempt or Exempt Settlement Class Members, is fair in light of the inherent power of this Court to reduce PAGA penalties, or otherwise modify an award of PAGA penalties.

10.3 Notification of Proposed Benefits. Within ten (10) calendar days after the determination of the Class Member Benefits, the Claims Administrator shall send a report to Settlement Class Counsel and Mitchell Silberberg & Knupp LLP showing the proposed Monetary Benefit for each Settlement Class member. Neither this report nor any other document provided to Settlement Class Counsel shall include any identifying information for members of the Settlement Class.

10.4 Objections to the Proposed Monetary Benefits. Settlement Class Counsel and Defendants shall have ten (10) calendar days from the mailing of the report of proposed benefits

1 referenced in Section 10.3 to notify the Claims Administrator in writing of any errors in the
2 calculations of the Monetary Benefits.

3 **10.5 Taxes.** Based upon an analysis of the facts of this Action, Settlement Class
4 Counsel and Defendants determined that Monetary Benefits to the Settlement Class members will
5 be treated as 34% wage income and 66% non-wage income. The Claims Administrator shall
6 calculate and deduct the employee's share of Employment Taxes from the wage portion of each
7 Settlement Class Member Monetary Benefit. The Claims Administrator shall remit the
8 Employment Taxes to the appropriate authorities. The Claims Administrator shall issue to each
9 Settlement Class member an IRS Form W-2 to report the wage portion of his or her payment
10 amount and the Employment Taxes. The Claims Administrator shall issue to each Settlement
11 Class member an IRS Form 1099 for the non-wage portion of his or her payment.

12 **10.6 Notice and Payment to Settlement Class Members.** Within twenty (20) calendar
13 days after receipt of the funds described in Section 9.3 above, the Claims Administrator shall
14 distribute to each Settlement Class member a check in the amount equal to the net payment such
15 member is entitled to receive under Section 10.2, including any corrections pursuant to Section
16 10.4 and net of deductions pursuant to Section 10.5.

17 **10.6.1** All funds associated with settlement checks sent to Settlement Class
18 members that are not cashed within one hundred eighty (180) calendar days of issuance
19 shall be sent to the California State Controller's Office: Unclaimed Property Fund. Any
20 cash benefit owed to any Settlement Class member whose addresses cannot be located
21 (after use of the search processes described in Section 6.1) shall also be sent to the
22 California State Controller's Office: Unclaimed Property Fund.

23 **10.7 Payment to LWDA.** Jason Mitchiner, as an allegedly aggrieved employee, filed
24 this lawsuit on behalf of other current and former employees under PAGA. From the TSP,
25 \$50,000 is allocated to and designated as penalties pursuant to PAGA, seventy-five percent (75%)
26 of which shall be paid to the LWDA. Within twenty (20) calendar days after receipt of the funds
27 described in Section 9.3 above, the Claims Administrator shall pay \$37,500 to the LWDA from

the Settlement Fund. This payment shall constitute full satisfaction of the obligation, if any, to pay civil penalties to the LWDA pursuant to California Labor Code Section 2699(i).

10.8 Maintenance of Records. The Claims Administrator shall maintain complete, accurate, and detailed records regarding notice and the administration of the Settlement Fund, including but not limited to, any objection to proposed benefits and the resolution thereof and any and all receipts by and disbursements from the Settlement Fund. The Claims Administrator shall make such records available to counsel for the Parties or to their designee upon reasonable request and at reasonable times. Upon request, the Claims Administrator shall provide such records to Defendants in an electronic format designated by Defendant. The Claims Administrator shall maintain all records for a period of not less than four (4) years following the expiration of the Final Effective Date.

10.9 Non-Cashed Settlement Checks. Settlement payment checks shall be valid for a period of one hundred and eighty (180) calendar days after they are mailed, and thereafter, will be cancelled. If any checks remain uncashed or not deposited, the Claims Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Settlement payment to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Settlement Class Member and/or Aggrieved Employee will have his or her Settlement amount available to him or her per the applicable claim procedure to request that money from the State of California..

11. SETTLEMENT CLASS COUNSEL'S FEES, COSTS, AND EXPENSES AND SETTLEMENT CLASS REPRESENTATIVE'S INCENTIVE PAYMENT

11.1 Settlement Class Counsel's Fees, Costs, and Expenses. In connection with the motion for final approval, Settlement Class Counsel shall file a motion with the Court seeking approval of an award of attorneys' fees in an aggregate amount that does not exceed the sum of Four Hundred Eighty Five Thousand Dollars And Zero Cents (\$485,000.00), 33% of the TSP, and an award of costs and expenses that does not exceed \$20,000.00. In the event that any Court approves an award in excess of Four Hundred Eighty Five Thousand Dollars And Zero Cents (\$485,000.00) for attorneys' fees or in excess of \$20,000.00 for costs and expenses, Settlement

1 Class Counsel shall be paid only the amounts listed in this Section. This award of attorneys' fees
2 shall be supported by Class Counsel's moving papers submitted to the Court. The amounts so paid
3 shall be for and in complete satisfaction of all attorneys' fees, costs, and expenses incurred to date
4 by the Settlement Class Representative, Settlement Class Counsel on behalf of the Settlement
5 Class Representative and the Settlement Class, and of all such future fees, costs, and expenses,
6 including fees, costs, and expenses incurred in documenting this Settlement, securing Court
7 approval of this Settlement, monitoring this Settlement, reviewing and participating in the notice,
8 claims, and distribution administration process, and obtaining the Final Approval Order. The
9 Claims Administrator will give Settlement Class Counsel an IRS Form 1099 for the paid
10 Settlement Class Counsel's Fees, Costs, and Expenses. Not later than the Final Effective Date,
11 Settlement Class Counsel shall provide a fully and properly executed IRS Form W-9 for purposes
12 of the payments which the Claims Administrator will make to Settlement Class Counsel.

13 **11.2 Incentive Payment.** In connection with the motion for final approval, Settlement
14 Class Counsel shall submit a request to the Court seeking approval for an award of an incentive
15 payment to the Settlement Class Representative appointed by the Court that does not exceed the
16 sum of Ten Thousand Dollars (\$10,000.00). Such payment shall be in addition to the Settlement
17 Class Representative's cash benefit under Section 10. In the event that any Court awards an
18 incentive payment in excess of Ten Thousand Dollars (\$10,000.00) to the Settlement Class
19 Representative, the Settlement Class Representative shall be paid only Ten Thousand Dollars
20 (\$10,000.00). The Claims Administrator shall mail the incentive payment check to the Settlement
21 Class Representative (care of Settlement Class Counsel) within ten (10) calendar days after receipt
22 of the funds described in Section 9.3 above. The Settlement Class Representative agrees that the
23 incentive payment is not a wage payment. The Claims Administrator shall issue an IRS Form
24 1099 to the Settlement Class Representative for the incentive payment. Such an incentive
25 payment is justified as Settlement Class Member initiated this lawsuit, performed work with Class
26 Counsel to investigate the claims alleged; communicated with Class Counsel during this matter,
27 searched for and provided documents related to the Settled Claims and his own employment to
28 Class Counsel; answered questions asked of him by Class Counsel; prepared for the possibility of

being deposited; risked paying legal costs if this matter resolved in favor of Defendants; and in recognition of the stigma for filing a class action lawsuit and related potential negative impact on job opportunities of the Settlement Class Representative.

11.3 No Additional Fees, Costs, or Expenses. Except as provided herein, each Settlement Class member shall bear his/her/its own attorneys' fees, costs, and expenses incurred in connection with any claim against Defendants.

12. FINAL ACCOUNTING AND DISPOSITION OF SETTLEMENT MONIES

12.1 Final Accounting. By no later than ninety (90) calendar days after the earlier of (a) the Settlement Termination Date or (b) the occurrence of both the Final Effective Date and the distribution of all checks referenced in Section 10.6, the Claims Administrator shall submit to the Parties a final accounting of all monies paid into and out of the Settlement Fund.

12.2 No Further Obligations. Upon receipt of the final accounting referenced in Section 12.1 and the satisfaction of the final invoice referenced in Section 9.5, Defendants shall have no obligation to provide further funding pursuant to this Agreement.

13. RELEASES

13.1 Final Approval Order. The Final Approval Order shall include a release by the Releasing Parties of and from any and all Settled Claims.

13.2 Release. Upon the Final Effective Date, and except for the obligations and rights created by this Agreement, the Releasing Parties hereby release and absolutely and forever discharge Defendants and all other Released Parties and Persons of and from any and all Settled Claims.

13.3 California Civil Code Section 1542.

13.3.1 Settlement Class Representative. To the fullest extent permitted by law, the Settlement Class Representative waives and relinquishes any and all rights or benefits he has or may have under California Civil Code Section 1542, or any comparable provision of state or federal law. California Civil Code Section 1542 provides:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor

1 at the time of executing the release and that, if known by him or
2 her, would have materially affected his or her settlement with the
3 debtor or released party.”

4 The Settlement Class Representative acknowledges that he is aware that he or his
5 attorneys may hereafter discover claims or facts in addition to or different from those now
6 known or believed to be true with respect to the subject matter of this Agreement and/or
7 the Settled Claims. The Settlement Class Representative acknowledges that he intends to
8 and will fully, finally, and forever settle and release any and all claims, including but not
9 limited to the Settled Claims described in Section 2.30, whether known or unknown,
10 suspected or unsuspected, which now exist, hereinafter may exist, or heretofore may have
11 existed. In furtherance of this intention, the releases contained in this Agreement shall be
12 and remain in effect as full and complete releases by the Settlement Class Representative
13 without regard to the subsequent discovery or existence of such different or additional
14 claims or facts.

14. **RIGHT TO OBJECT**

15 **14.1 Procedure.** Any Settlement Class Member, on his or her own, or through an
16 attorney hired at his or her own expense, may object to the proposed settlement or the requests for
17 attorneys’ fees, costs/expenses, and/or an incentive award. For written objections to be considered
18 they must be sent in writing to the Claim Administrator and include all of the following
19 information: (a) the name of this Action; (b) the objector’s full name, address, and telephone
20 number (and, if applicable, the objector’s lawyer’s full name, address, and telephone number); and
21 (d) the identify of any current or former lawyer, if any, who may be entitled to compensation for
22 any reason related to the objection. Oral objections may also be made by appearing at the Final
23 Approval Hearing and voicing such objections before the Court, regardless of whether or not the
24 Settlement Class Member made a timely written objection. Any written objections not raised
25 properly and timely will be waived. The Objection Period shall be extended by ten (10) days for
26 any Settlement Class Member whose Class Notice is remailed in conjunction with Section 6.3.

27 **14.2 Dispute of Workweeks by Settlement Class Member:** The Class Notice shall
28 provide that any Settlement Class Member may, by inquiry to the Claims Administrator, receive

1 details about the information used to calculate that Settlement Class Member's Individual
 2 Allocation amount. If any Settlement Class Member disputes the information used to calculate the
 3 Settlement Class Member Allocation Amount, the Settlement Class Member may state the basis of
 4 his or her disagreement and submit documentation supporting the Settlement Class Member's
 5 position. To be valid, a dispute must be in writing, be postmarked or fax stamped during the Opt
 6 Out Period and returned to the Claim Administrator at the specified address or fax telephone
 7 number stated in the Class Notice and contain: (1) the Settlement Class Member's full name,
 8 signature, address, and telephone number; (2) the number of workweeks the Settlement Class
 9 Member contends is correct; and (3) any evidence supporting his/her contention. The date of the
 10 postmark on the return mailing envelope or fax stamp shall be the exclusive means used to
 11 determine whether the dispute was timely submitted. The time for a Settlement Class Member to
 12 dispute his or her workweeks will be increased by ten (10) calendar days if the Settlement Class
 13 Member's Class Notice is remailed in accordance with Section 6.3. The workweeks identified for
 14 each Settlement Class Member will be presumed to be correct, unless a particular Settlement Class
 15 Member proves otherwise to the Claim Administrator by credible evidence. The Claim
 16 Administrator shall notify Defendants' counsel of any dispute so raised. The Claim Administrator
 17 shall make the final, non-appealable determination as to all valid workweek disputes. To the extent
 18 any challenge affects the calculation of Settlement Class Member Allocation Amounts for other
 19 Settlement Class Members, such amounts shall be recalculated using the information resulting
 20 from the challenge.

21 **15. NOTICES**

22 **15.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to
 23 in writing by the Party receiving such communication, all notices, requests, or other required
 24 communications hereunder shall be in writing and shall be sent by one of the following methods:
 25 (a) by electronic mail; (b) by first class mail, postage prepaid; or (c) by personal or overnight
 26 delivery (including by Federal Express or other courier service). All such communications shall
 27 be sent to the undersigned persons at their respective addresses as set forth herein.

28 Settlement Class Counsel:

Jonathan M. Lebe (jon@lebelaw.com)
 Zachary Gershman (zachary@lebelaw.com)
 Lebe Law, APLC
 777 S. Alameda Street, Second Floor
 Los Angeles, CA 90021

Defendant:
 Adam Levin (axl@msk.com)
 Corey Singer (cgs@msk.com)
 Mitchell Silberberg & Knupp LLP
 2049 Century Park East, 18th Floor
 Los Angeles, California 90067

Notice shall be deemed effective: (1) if given by electronic means, at the time of transmission if the sender does not receive an error message; and (2) if given by mail or personal delivery, when signed for or when delivery is refused.

15.2 Changes in Designated Recipients. Any Party may re-designate the Person to receive notices, requests, demands, or other communications required or permitted by this Agreement by providing written notice to the other Parties and the Claims Administrator.

16. MISCELLANEOUS

16.1 Entire Agreement. This Agreement supersedes and replaces any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the Parties with respect to the subject matter hereof. The Parties acknowledge that no representations, inducements, promises, or statements, oral or otherwise, have been made or relied upon by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other covenant, representation, inducement, promise or statement not set forth in writing in this Agreement shall be valid or binding.

16.2 Modification or Amendment. This Agreement may not be modified or amended, except in writing with the unanimous consent of the Parties and with the approval of the Court.

16.3 Execution in Counterparts. This Agreement may be executed by signature of the Parties hereto, or their authorized representatives, on multiple copies of this Agreement, including copies transmitted by electronic portable document format (PDF), and, upon being so executed by all Parties hereto, shall be effective as if all signatures appeared on the original of this Agreement.

1 **16.4 Authority of Counsel.** Settlement Class Counsel are authorized by the members
2 of the Settlement Class, and by the Court, to take all appropriate action required and permitted to
3 be taken by the Settlement Class pursuant to this Agreement to effectuate its terms, and, subject to
4 Court approval, are authorized to enter into any modification or amendments to this Agreement on
5 behalf of the Settlement Class which they deem appropriate.

6 **16.5 Headings.** The headings of the sections, paragraphs, subparagraphs, and exhibits
7 of this Agreement are included for convenience only and shall not be deemed to constitute part of
8 this Agreement or to affect its construction.

9 **16.6 Liens.** The Parties released under this Agreement shall have no obligation to pay
10 or otherwise resolve any liens that are or may be asserted against settlement payments to members
11 of the Settlement Class pursuant to the terms of this Agreement. In the event any such lien is
12 asserted, it is the responsibility of the Settlement Class Member to pay, compromise, or otherwise
13 resolve the lien at no cost to Defendant, the Released Parties, or the Settlement Fund.

14 **16.7 No Encouragement to Opt Out.** The Parties agree that neither they nor their
15 counsel will solicit or otherwise directly or indirectly encourage Settlement Class Members to
16 request exclusion from the Settlement Class, to object to this Settlement, or to appeal from the
17 Final Approval Order. The Settlement Class Representative will not request exclusion from the
18 Settlement Class. The Settlement Class Representative and Settlement Class Counsel will not
19 object to this Settlement and will not appeal from the Final Approval Order, or any portion of it.

20 **16.8 Gender.** Whenever in this Agreement the context so requires, the neutral gender
21 shall refer to and include the masculine or feminine or non-binary, and the singular shall refer to
22 and include the plural.

23 **16.9 Cooperation And Further Acts.** The Parties and their counsel agree to cooperate
24 fully with one another and to use their best efforts to effectuate the settlement, including without
25 limitation, in seeking preliminary approval and final approval of the Agreement, carrying out the
26 terms of this Agreement, and promptly agreeing upon and executing all such other documentation
27 as may be reasonably required to obtain final Court approval of the settlement. The Parties shall

1 cooperate in good faith and undertake all reasonable actions and steps to accomplish the events
2 described in this Agreement.

3 **16.10 Beneficiaries.** This Agreement shall be binding upon the Parties and each of them,
4 and each of their respective heirs, successors, and assignees, and shall inure to the benefit of the
5 Parties, as well as to each of the Released Parties, each of whom shall be deemed a third party
6 beneficiary of this Agreement.

7 **16.11 Choice of Law and Jurisdiction.** This Agreement in all respects shall be
8 interpreted, enforced, and governed by and under the laws of the State of California applicable to
9 instruments, Persons, and transactions which have legal contacts and relationships solely within
10 the State of California. Any action pertaining to the terms of this Agreement that is not covered
11 by Section 4.1 shall be brought in a court of competent jurisdiction located in the State of
12 California.

13 **16.12 Warranty Regarding Advice.** Settlement Class Counsel warrants that the
14 Settlement Class Representative has been fully advised of and agrees to the terms of this
15 Agreement. The Settlement Class Representative hereby acknowledges that he has been
16 represented by legal counsel throughout all negotiations which preceded the execution of this
17 Agreement, and that this Agreement has been executed with the consent and on the advice of said
18 counsel.

19 **16.13 No Tax Advice.** None of the Released Parties has any responsibility or liability for
20 any tax matters relating to any payments made under this Agreement including, but not limited to,
21 tax advice and/or the withholding of or reporting of taxes.

22 **AGREED TO AND ACCEPTED.**

23 **JASON MITCHINER**

24 Dated: Mar 21, 2022

25 By: *Jason Mitchiner*
Jason Mitchiner (Mar 21, 2022 16:13 PDT)

26 Jason Mitchiner
Settlement Class Representative

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Dated: 3/21/2022 _____

MOVE SALES, INC.

By: Terry Kontonickas
Terry Kontonickas
Its: _____

Dated: 3/21/2022 _____

MOVE, INC.

By: Terry Kontonickas
Terry Kontonickas
Its: _____

APPROVED AS TO FORM.

Dated: 3/22/2022 _____

LEBE LAW, APLC

By: 
Jonathan M. Lebe
Settlement Class Counsel

Dated: 3/22/2022 _____

MITCHELL SILBERBERG & KNUPP LLP

By: 
Adam Levin
Attorneys for Defendants
MOVE SALES, INC. and MOVE INC.

EXHIBIT 1

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

Mitchiner v. Move Sales, Inc. DBA Realtor.Com et al.
Superior Court, County of Los Angeles
Case No. 20STCV23141

To: All persons who have been, or currently are, employed by Move Sales, Inc. dba Realtor.com (“Move Sales” or “Defendant”) as hourly or non-exempt employees from April 6, 2016 to November 19, 2021 or who have been, or currently employed, by Defendant as exempt employees from March 13, 2020 to November 19, 2021.

**THIS NOTICE MAY AFFECT YOUR RIGHTS.
PLEASE READ IT CAREFULLY.**

You are receiving this notice because Move Sales’ records indicate that you may be entitled to participate in this class action settlement.

The following recitation does not constitute the findings of the Court. Move Sales adamantly denies any and all liability. This Notice of Proposed Class Action Settlement and Hearing Date for Court Approval (“Notice”) should not be understood to be an expression of the Court’s views on the merits of any claim or defense raised by the parties.

I. WHY IT IS IMPORTANT TO READ THIS NOTICE:

The Superior Court of the State of California in and for the County of Los Angeles (the “Court”) has granted preliminary approval to a proposed Settlement (defined below) of a class action lawsuit and representative action regarding wage and hour claims of all persons who have been, or currently are, employed by Move Sales as hourly or non-exempt employees from April 6, 2016 to November 19, 2021 (“Non-Exempt Class Members”), or who have been, or currently employed, by Defendant as exempt employees from March 13, 2020 to November 19, 2021 (“Exempt Class Members”) bearing case number 20STCV23141 (the “Litigation”).

Because your rights may be affected by the Settlement (defined below), it is important that you read this notice carefully. Move Sales’ records show that you were employed by Move Sales in California, as a non-exempt our hourly employee sometime from April 6, 2016 to November 19, 2021 or as an exempt employee sometime from March 13, 2020 to November 19, 2021. Therefore, you are a “Class Member” in this Litigation.

The purpose of this Notice is to provide you with a brief description of the Litigation, what investigation of the claims has taken place, and, finally, to inform you of the terms of the proposed Settlement (defined below) and to discuss your rights and options in connection with the lawsuit and the Settlement (defined below).

II. WHAT THE CASE IS ABOUT:

A former Move Sales employee filed a class action against Move Sales alleging that certain of Move Sales' wage and hour practices violated California law. Specifically, the case alleges the following claims against Move Sales:

(1) Failure To Pay Earned Wages (California Labor Code §§ 204 and 210); (2) Failure To Pay Minimum Wages (California Labor Code §§ 510, 1194, 1194.2, 1197, and 1198); (3) Failure to

Pay Overtime Compensation (California Labor Code §§ 510, 1198); (4) Unlawful Deduction of Wages (California Labor Code § 221); (5) Failure to Provide Meal Breaks (California Labor §§ 226.7, 512(a), 1198); (6) Failure to Provide Rest Periods (California Labor §§ 226.7, 1198); (7) Failure to Reimburse for Business Expenses (California Labor Code §§ 2800, 2802); (8) Failure to Provide and Maintain Itemized and Accurate Wage Statements (California Labor Code §§ 226(a), 1174(d), and 1198); (9) Failure to Timely Pay All Wages Due Upon Separation of Employment Including Unused, Vested Vacation Wages (California Labor Code §§ 201, 202, 203, and 227.3); (10) Unfair Competition (California Bus. & Prof. Code § 17200, *et seq.*; and (11) Enforcement of Labor Code § 2698 *et seq.* (“PAGA”) including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, reimbursements, damages, unpaid costs, penalties (including penalties under the California Labor Code’s Private Attorneys General Act of 2004, as amended, California Labor Code section 2698, *et seq.*), liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, including without limitation, California Labor Code sections 201, 202, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, or 2802, California Code of Civil Procedure section 1021, California Business and Professions Code section 17200, *et seq.*, penalties or other payments which in any way arise out of, are based on, or relate in any way to any of the foregoing, including but not limited to penalties, premiums, or payments under California Labor Code Sections 203, 210, 226(e), 226(f), 226.3, 226.7, 558, 1174.5, 1198.5(k), or 1199, any California Industrial Commission Wage Order, and any other statute or regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of payments, check stubs or wage statements, record-keeping obligations, and/or reimbursement of expenses. In bringing his claims against Move Sales, the Class Representative sought to obtain, among other things, unpaid wages, interest, attorneys’ fees, statutory penalties, and civil penalties on behalf of other employees of Move Sales.

Move Sales adamantly denies each, every, and all of the allegations of the Litigation, and maintains that it complied with all California wage and hour laws, such that the Class Representative cannot properly recover any damages including but not limited to civil penalties under California law. Although Move Sales denies these allegations, it has chosen to resolve the matter based upon the terms and conditions set forth in the Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement” or “Settlement”). The Court will determine whether or not to grant final approval of this Settlement.

The Settlement provides for the certification, for settlement purposes only, of all persons who have been, or currently are, employed by Move Sales as hourly or non-exempt employees from April 6, 2016 to November 19, 2021, or who have been, or currently employed, by Defendant as exempt employees from March 13, 2020 to November 19, 2021.

The terms of the Settlement are set forth more fully in the next section, but generally Move Sales has agreed to pay up to \$1,470,000 to resolve the Litigation, should the Court grant final approval to the proposed Settlement.

III. THE TERMS OF THE CONDITIONAL CLASS ACTION SETTLEMENT:

On behalf of the Class Members, the Class Representative has reached a Settlement with Move Sales and on [the preliminary approval date], the Court conditionally certified two classes, for settlement purposes only, comprised of the following persons (collectively, the “Class”):

All current and former hourly or non-exempt employees of Defendant in California from April 6, 2016 to November 19, 2021; and

All current and former exempt employees of Defendant in California from March 13, 2020 to November 19, 2021.

Without admitting liability, Move Sales has agreed to pay \$1,470,000 for Settlement of the claims in this matter (the "Settlement Sum"). Class Members who do not opt out of the Class pursuant to the procedures set forth in this Notice ("Settlement Class Members") will be bound by the Settlement and will release Move Sales and all Released Parties (defined below) for the Released Claims (defined below) (see below for more information).

This Settlement is conditioned upon the Superior Court of the State of California in and for the County of Los Angeles, entering an order at or following the hearing finally approving the Settlement (the "Settlement Hearing") as fair, reasonable, adequate, and in the best interests of the Settlement Class.

The following payments will be sought, subject to final approval by the Court, from the Settlement Sum of \$1,470,000:

- (1) Payment in an amount not to exceed \$10,000 to the Class Representative, Jason Mitchiner, in addition to the sum that he will receive as a Settlement Class Member, to compensate him for acting on behalf of the Class, including the time he expended to fulfill the role of Class Representative (e.g., assisting with the investigation of the claims);
- (2) Payment in an amount not to exceed \$485,000 in fees to Class Counsel as attorneys' fees, to compensate them for their services;
- (3) Payment in an amount not to exceed \$20,000 in litigation costs and expenses to Class Counsel, to reimburse Class Counsel for actual litigation costs and expenses expended in this matter by Class Counsel;
- (4) Payment in an amount of up to \$15,000.00 to the Settlement Administrator, XXXX, for the fees and costs of administering this Settlement; and
- (5) Payment in an amount of \$37,500 to the California Labor Workforce and Development Agency ("LWDA") for the State of California's share of the \$50,000 allocated as penalties pursuant to the California Labor Code Private Attorney General Act of 2004 ("PAGA").

The Net Settlement Sum that is available to pay Settlement Class Members will be the Gross Settlement Sum less the above-mentioned requested payments which are subject to final approval by the Court. The Net Settlement Sum is estimated to be approximately \$XXXXXX, and will be automatically distributed to Class Members who do not opt out of this Settlement (i.e. Settlement Class Members), and these gross individual shares are known as the "Individual Settlement Amount." The Individual Settlement Amount for each Settlement Class Member shall be determined on a pro-rata basis based on their number of workweeks (any week in which the Class Member worked at least one (1) day) during the Class Period. Each Individual Settlement Amount shall be allocated as 34% wages and 66% interest and penalties. The wage portion of each Individual Settlement Amount is subject to employee's share of state and federal employment and payroll taxes and withholdings prior to distribution to Settlement Class Members.

V. WHAT IS YOUR EXPECTED SHARE:

As discussed above, the Net Settlement Sum will be automatically distributed to Class Members who do not opt out of this Settlement, based on their respective number of workweeks.

Defendant's records reflect that you worked [insert number of workweeks] workweeks during the Class Period, and based on this number of workweeks, your gross Individual Settlement Amount is estimated to be [insert estimated amount].

The amount stated herein as your estimated Individual Settlement Amount may change depending on the number of Class Members who do not opt-out and the Court's order with respect to the requests for attorneys' fees, litigation costs and expenses, awards to class representative, administration expenses, and PAGA payment. Further, as discussed above, your gross Individual Settlement Amount will be allocated as 34% wages (reported on an IRS Form W-4), and 66% interest and penalties (reported on an IRS Form 1099). The wage portion is subject to employee's share of state and federal employment and payroll taxes and withholdings prior to distribution.

VI. WHAT YOU NEED TO DO IN RESPONSE TO THIS NOTICE:

You have received this Notice because Move Sales' records indicate that you are a member of the conditionally certified Class. You have the following four options:

1. **IF YOU WISH TO PARTICIPATE IN THE CLASS ACTION SETTLEMENT AND REMAIN A MEMBER OF THE SETTLEMENT CLASS AND BE ISSUED A PAYMENT UNDER THE SETTLEMENT, YOU (or in the event of a deceased Class Member, the estate or authorized beneficiary) ARE NOT REQUIRED TO TAKE ANY FURTHER ACTION.** You will be issued payment if the Court grants final approval to the Settlement and Judgment becomes final, and you will release the Released Parties for the Released Claims (see next section for definition of "Released Claims" and "Released Parties"). If you wish to receive a payment under the Settlement, you must not "Opt Out" of the Settlement. **To ensure receipt of your payment, you must make sure that your correct mailing address is on file with the Settlement Administrator.**
2. **YOU MAY ELECT TO "OPT OUT" OF THE SETTLEMENT CLASS AND THUS EXCLUDE YOURSELF FROM THE SETTLEMENT INCLUDING: (1) RECEIVING THE ASSOCIATED INDIVIDUAL SETTLEMENT AMOUNT PAYMENT, EXCEPT FOR THE AMOUNT YOU WILL RECEIVE AS AN AGGRIEVED EMPLOYEE UNDER THE PAGA; AND (2) THE ASSOCIATED RELEASE OF CLAIMS AND STIPULATED JUDGMENT, EXCEPT FOR CLAIMS UNDER THE PAGA.** If you wish to exercise this option, you must mail to the Settlement Administrator an Opt Out request, in writing and signed, which clearly states that the Class Member wishes to be excluded from the Settlement of *Mitchiner v. Move Sales, et al.*, Los Angeles Superior Court Case No. 20STCV23141, provides the Class Members' name, address, and telephone number, and is postmarked on or before the **[Opt Out Response Deadline]**. If a timely and complete Opt Out request is not received by the Settlement Administrator postmarked on or before the **[Opt Out Response**

Deadline, you will be deemed to have forever waived your right to opt out of the Settlement Class. Class Members who do not properly opt out of the Settlement shall be Members of the Settlement Class. Class Members who do properly opt out of the Settlement shall not be bound by the terms of the Settlement, except for the release of claims under the PAGA, and shall not be entitled to any benefits as a result of this Settlement, including payment of any Individual Settlement Amount, except for the amount that you are entitled to as an aggrieved employee under the PAGA.

3. **FINALLY, PROVIDED YOU DO NOT OPT OUT OF THE SETTLEMENT CLASS, YOU MAY OBJECT TO THE SETTLEMENT.** You may object to the Settlement by mailing written objections to the Claims Administrator, postmarked on or before **insert Objection Deadline**, to the following address: **XXXXXXXXXX**. The written objection must include all of the following information: (a) the name of this Action (*Jason Mitchiner v. Move Sales, et al.*, Los Angeles Superior Court Case No. 20STCV23141); (b) the objector's full name, address, and telephone number (and, if applicable, the objector's lawyer's full name, address, and telephone number); (d) the identify of any current or former lawyer, if any, who may be entitled to compensation for any reason related to the objection, that you wish to object to the Settlement, and the basis for the objection. Alternatively, you may voice an oral objection at the final approval hearing on: **XXXXXXXXXX** by making an appearance or obtain an attorney to enter an appearance for you at the final approval hearing at your own expense. You may voice an oral objection at the hearing regardless of whether or not you have filed a timely written objection. Class Members who choose this option will be responsible for any attorneys' fees or costs incurred as a result of this election. Due to the ongoing COVID-19 pandemic the Court has instituted a social-distancing program, and you may not be able to enter the courthouse, or otherwise may have to appear by audio or video at the final approval hearing.

Information regarding the Court's social distancing program may be found at: <https://www.lacourt.org/>

Information regarding scheduling a remote audio or visual appearance at the Settlement Hearing may be found at: <https://my.lacourt.org/laccwelcome>

If you take no action, you will remain a member of the Settlement Class. A Class Member who does not opt out of participation in the Settlement will be bound by the Judgment and be issued payment under the Settlement. If you remain a member of the Settlement Class, you will be represented by the attorneys for Plaintiff, who has been designated by the Court as Class Counsel. Class Counsel's contact information can be found below Section IX.

VII. RELEASE OF CLAIMS OF SETTLEMENT CLASS MEMBERS:

If the Court grants final approval of the Settlement, Class Members who do not Opt Out of the Settlement, will be subject to the Judgment rendered by the Court pursuant to the Settlement Agreement and be precluded from bringing Released Claims in the future for the period from April 6, 2016 up to and including November 19, 2021, as to Non-Exempt Class Members, and March 13, 2020 up to and including November 19, 2021, as to the Exempt Class Members.

Specifically, after final approval by the Court, the Settlement will fully release and discharge all Released Claims (as defined below) of Settlement Class Members against Released Parties which shall mean Defendant, and all of its respective current and former members, owners, officers, directors, employees, partners, shareholders, agents, and any other successors, heirs, assigns, or legal representatives, any attorneys, insurers, and claims representatives. (“Released Parties”).

“Released Claims” as to the Non-Exempt Class Members means and refers, in connection with the employment of the Non-Exempt Class Members from April 6, 2016 through November 19, 2021, to any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action, which in any way arises out of, is based on, or relates in any way to the facts alleged in the Complaint, which specifically includes: (a) minimum, regular, and/or overtime wages allegedly due; (b) meal or rest periods allegedly missed, not provided, and/or denied; (c) check stubs, wage statements, documentation, information, or records provided, delivered, or maintained, or not provided, delivered, or maintained; (d) the payment, non-payment, or timeliness of payment of wages or premiums due or allegedly due; (e) record-keeping obligations; (f) the payment or non-payment of reimbursements required under California Labor Code Section 2802; (g) violation or alleged violation of California Labor Code Sections 201, 202, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, or 2802, any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of payments, check stubs or wage statements, record-keeping obligations, and/or reimbursement of expenses; (h) attorneys’ fees due or allegedly due under California Labor Code Section 218.5 or any other statute, regulation, or contractual provision; (i) any other claims that any Defendant has arising out of, based upon, or relating to the allegations contained in the Complaint; and (j) penalties or other payments which in any way arise out of, are based on, or relate in any way to any of the foregoing, including but not limited to penalties, premiums, or payments under California Labor Code Sections 203, 210, 226(e), 226(f), 226.3, 226.7, 558, 1174.5, 1198.5(k), or 1199, any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of payments, check stubs or wage statements, record-keeping obligations, and/or reimbursement of expenses. Without in any way limiting the foregoing, Released Claims as to the Non-Exempt Class Members shall include all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action under statutes and regulations set forth in this Section regarding Non-Exempt Class Members, whether enforced directly or pursuant to the California Business and Professions Code Section 17200, *et seq.*, or any other mechanism, other than through the PAGA.

“Released Claims” also means and refers to in, connection with the employment of Non-Exempt Settlement Class Members who are also Settlement Aggrieved Employees from June 15, 2019, through November 19, 2021, additionally all claims listed above in regards to Non-Exempt Class Members and any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, civil penalties, and causes of action, under the PAGA which in any way arises out of, is based on, or relates in any way to the facts alleged in the letter from Class Counsel on June 15, 2020 to the Labor and Workforce Development Agency on behalf of the Settlement Class, which specifically includes: (a) minimum, regular, and/or overtime wages allegedly due; (b) meal or rest periods allegedly missed, not provided, and/or denied; (c) check stubs, wage statements, documentation, information, or records provided, delivered, or maintained, or not provided, delivered, or maintained; (d) the payment,

non-payment, or timeliness of payment of wages or premiums due or allegedly due; (e) the payment or non-payment of reimbursements required under California Labor Code Section 2802; (f) violation or alleged violation of California Labor Code Sections 201, 202, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, or 2802, any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of payments, check stubs or wage statements, and/or reimbursement of expenses; (g) attorneys' fees due or allegedly due under California Labor Code Section 218.5 or any other statute, regulation, or contractual provision; (h) any other claims that any Releasing Party has arising out of, based upon, or relating to the allegations contained in the PAGA Letter; and (i) penalties or other payments which in any way arise out of, are based on, or relate in any way to any of the foregoing, including but not limited to penalties, premiums, or payments under California Labor Code Sections 203, 210, 226(e), 226(f), 226.3, 226.7, 558, and 1174.5, any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of payments, check stubs or wage statements, and/or reimbursement of expenses.

"Released Claims" as to the Exempt Class Members means and refers, in connection with the employment of the Exempt Class Members from March 13, 2020, through November 19, 2021, to any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action, of every kind and/or nature whatsoever, whether now known or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, regardless of legal theory or type or amount of relief or damages claimed, which Releasing Party now has or at any time ever had against Released Party through the date the Preliminary Approval Order is entered, and which in any way arises out of, is based on, or relates in any way to the facts alleged in the Complaint regarding Defendants' alleged failure to provide payment or non-payment of reimbursements required under California Labor Code Section 2802, or any derivative violations thereof, including violations or alleged violation of California Labor Code Section 2802, any California Industrial Commission Wage Order Section regarding the reimbursement of expenses, and/or any other statute or regulation regarding the reimbursement of expenses; attorneys' fees due or allegedly due under California Labor Code Section 218.5 or any other statute, regulation, or contractual provision; any other claims that any Releasing Party has arising out of, based upon, or relating to the allegations contained in the Complaint regarding the reimbursements of business expenses; and penalties or other payments which in any way arise out of, are based on, or relate in any way to the reimbursement of expenses, including but not limited to penalties, premiums, or payments under any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the reimbursement of expenses, other than through the PAGA.

"Released Claims" also means and refers to, in connection with the employment of Exempt Settlement Class Members who are also Settlement Aggrieved Employees, additionally all claims listed above in regards to Exempt Class Members from March 13, 2020 through November 19, 2021, and any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, civil penalties, and causes of action, under the PAGA and which in any way arises out of, is based on, or relates in any way to the facts alleged in the letter from Class Counsel on June 15, 2020 to the Labor and Workforce Development Agency on behalf of the Settlement Class regarding Defendants' alleged failure to provide payment or non-payment of reimbursements required under California Labor Code Section 2802, or any derivative violations thereof, including violations or alleged violation of California Labor Code Section 2802, any California Industrial Commission Wage Order Section

regarding the reimbursement of expenses, and/or any other statute or regulation regarding the reimbursement of expenses; attorneys' fees due or allegedly due under California Labor Code Section 218.5 or any other statute, regulation, or contractual provision; any other claims that any Releasing Party has arising out of, based upon, or relating to the allegations contained in the PAGA Letter regarding the reimbursements of business expenses.

Class Members who do not properly Opt-Out will be deemed to have acknowledged and agreed that their claims for wages, any other form of compensation, and/or penalties in the Action are disputed and subject to a bona fide dispute, and that the Settlement Payments constitute payment of all sums allegedly due to them.

VIII. THE NEXT STEP:

The Settlement Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _____ on _____ in Department 12 of the Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012.

You may also appear remotely for the Settlement Hearing. Information regarding scheduling a remote audio or visual appearance at the Settlement Hearing may be found at: <https://my.lacourt.org/laccwelcome>

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

IX. HOW TO OBTAIN ADDITIONAL INFORMATION:

This Notice is only a summary of the class action lawsuit and the associated Settlement. For more information, you may inspect the Court files and the Settlement Agreement at the Los Angeles County Courthouse, located at 111 North Hill Street, Los Angeles, CA 90012

You may also contact Class Counsel for more information:

Jonathan M. Lebe (SBN 284605)
Zachary T. Gershman (SBN 328004)
Lebe Law, APLC
777 S. Alameda Street, 2nd Floor
Los Angeles, CA 90021
Telephone: (213) 444-1973

For information regarding final approval of this Settlement, you may refer to the Settlement Administrator's website at: **XXXXXXXXXXXXXXXXXX**

PLEASE DO NOT CALL OR WRITE TO THE COURT ABOUT THIS NOTICE.

EXHIBIT 2

Jonathan M. Lebe (State Bar No. 284605)
Jon@lebelaw.com
Zachary Gershman (State Bar No. 328004)
Zachary@lebelaw.com
Nicolas Tomas (State Bar No. 339752)
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777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Telephone: (213) 358-7046

Attorneys for Plaintiff Jason Mitchiner,
Individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JASON MITCHINER, Individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

MOVE SALES, INC. DBA REALTOR.COM;
MOVE, INC.; and DOES 1 through 25,
inclusive,

Defendants.

Case No.: 20STCV23141

Hon. Carolyn B. Kuhl – Dept. 12

**SECOND AMENDED CLASS
ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- 1. Failure To Pay Earned Wages (Cal. Lab. Code §§ 204, 210);**
- 2. Failure To Pay Minimum Wages (Cal. Lab. Code §§ 510, 1182.12, 1194, 1197, 1197.1, 1198);**
- 3. Failure To Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1198);**
- 4. Unlawful Deduction of Wages (Cal. Lab. § 221);**
- 5. Failure To Provide Meal Breaks (Cal. Lab. §§ 226.7, 512(a), 1198);**
- 6. Failure to Provide Rest Periods (Cal. Lab. §§ 226.7, 1198);**
- 7. Failure To Reimburse For Business Expenses (Cal. Lab. Code §§ 2800 and 2802);**
- 8. Failure To Provide And Maintain Itemized And Accurate Wage Statements (Cal. Lab. Code § 226(a), 1174(d), 1198);**
- 9. Failure To Timely Pay All Wages Due Upon Separation of Employment Including Unused,**

Vested Vacation Wages (Cal. Lab. Code §§ 201, 202, 203, 227.3);
10. Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *Et Seq.*); and
11. Enforcement of Labor Code § 2698 *Et. Seq.* (“PAGA”)

Jury Trial Demanded

Plaintiff Jason Mitchiner (hereinafter “Plaintiff”) hereby brings this wage and hour Class Action against Defendant Move Sales, Inc. dba Realtor.com (hereinafter “Defendant Move Sales”), Move, Inc. (hereinafter “Defendant Move”), and Does 1 through 25 (collectively referred to as “Defendants”), individually and on behalf of all other similarly situated employees for damages and/or penalties for violations of California law, including without limitation, failure to pay all regular, minimum, and overtime wages owed, failure to provide off-duty meal periods, failure to provide off-duty rest periods, failure to reimburse business expenses, failure to provide accurate itemized wage statements, and failure to timely pay final wages, as follows:

INTRODUCTION

1. As discussed herein, this class and representative action concerns Defendants’ numerous violations of California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, the California Industrial Welfare Commission’s (“IWC”) Wage Orders, the California Business and Professions Code § 17200, *et seq*, and under the PAGA.

2. Defendants operate a real estate listings website.

3. Plaintiff was employed by Defendants as a Broker Consultant or similar position.

4. Defendants employed Plaintiff and Non-Exempt Subclass Members (as defined below) for more than eight hours per day and more than forty hours per workweek and failed to Plaintiff and Non-Exempt Subclass Members overtime compensation for the overtime hours worked, in violation of Labor Code §§ 510, 1198 and the applicable IWC Wage Order.

Specifically, Defendants failed to pay all overtime compensation to Plaintiff and Non-Exempt Subclass Members because overtime rates paid to Class Members did not account for all non-discretionary bonuses, commissions, and wages, (including, for example, “guaranteed commissions”). Additionally, overtime wages were often paid multiple pay periods after they were earned, in violation of Labor Code § 204.

5. Defendants failed to provide Plaintiff and Non-Exempt Subclass Members all their earned wages, in violation of, among others, Labor Code § 204, 210, 1194 and the applicable Wage Order (as well as pay liquidated damages owed under Labor Code §1194.2). Defendants do not pay all commissions earned by Plaintiff and Non-Exempt Subclass Members, including illegally deducting wages from their commissions earned in violation of Labor Code § 221. Additionally, Defendants have had, and continue to have, an illegal rounding time practice and/or policy that is not neutral and undercompensates Plaintiff and Non-Exempt Subclass Members (“Illegal Rounding-Time Policy”).

6. To perform their jobs, Plaintiff and Class Members (as defined below) were required to make use of their own home-internet connection and use a personal cellphone for business-related purposes, including without limitation, to coordinate with customers and with other employees. Defendants did not fully reimburse Plaintiff and Class Members for these business-related expenses in violation of Labor Code §§ 2800, 2802, and the applicable IWC Wage Order.

7. Defendants employed Plaintiff and Non-Exempt Subclass Members for work periods of more than five hours without a meal period of not less than thirty minutes and failed to fully compensate Plaintiff and Non-Exempt Subclass Members for these missed meal periods, in violation of Labor Code §§ 226.7, 512(a), 1198 and the applicable IWC Wage Order. When Defendants denied Plaintiff and Non-Exempt Subclass Members their meal periods, Defendants failed to pay them the premium compensation mandated by Labor Code §§ 226.7 at their regular rate of pay, and instead under-compensated Plaintiff and Non-Exempt Subclass Members.

1 8. Defendants employed Non-Exempt Subclass Members for work periods of four
2 hours or major fraction thereof without rest periods of ten minutes' net rest time and failed to
3 compensate Non-Exempt Subclass Members for these missed rest periods, in violation of
4 Labor Code §§ 226.7, 1198 and the applicable Wage Order. When Non-Exempt Subclass
5 Members took rest breaks, they were regularly interrupted, less than ten minutes, and/or on
6 duty.

7 9. Defendants knowingly and intentionally failed to provide Plaintiff and Non-
8 Exempt Subclass Members with timely and accurate wage and hour statements, in violation of
9 Labor Code §§ 226(a), 1174(d), 1198 and the applicable IWC Wage Order including based on
10 the above.

11 10. Defendants also failed to provide Plaintiff and Non-Exempt Subclass Members
12 their final wages, including their Paid-Time-Off ("PTO"), immediately upon termination, or
13 within seventy-two hours of voluntarily leaving employment.

14 11. Further, Defendants also failed to comply with Labor Code § 246, which
15 requires that employer provide employees who work for thirty (30) or more days within a year
16 from the commencement of employment 1 hour of paid sick leave for every 30 hours worked
17 paid at the regular rate of pay, including non-discretionary bonuses, commissions, and wages
18 (e.g., guaranteed commissions). Defendants have violated Labor Code § 246 by willfully failing
19 to provide such mandatory paid sick leave to Plaintiff and other aggrieved employees.

20 12. On information and belief, Plaintiff alleges that Defendants applied the same
21 policies described above to all other members of the proposed Class. As alleged below, these
22 uniform policies, practices and procedures violated California's labor laws and constituted
23 unfair, fraudulent or illegal business practices under Business & Professions Code § 17200
24 *et seq.*

25 **PARTIES, JURISDICTION AND VENUE**

26 13. Plaintiff was employed by Defendants as a Broker Consultant or similar
27 position from approximately July of 2019 until June 2, 2020.

1 14. Defendant Move Sales is a corporation organized under the laws of the state of
2 Delaware. Defendant Move Sales is headquartered in Westlake Village, California.

3 15. Defendant Move is a corporation organized under the laws of the state of
4 Delaware. Defendant Moves is headquartered in Santa Clara, California.

5 16. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 mentioned herein, Defendants and DOES 1 through 25 are and were business entities,
7 individuals, and partnerships, licensed to do business and actually doing business in the State
8 of California. As such, and based upon all the facts and circumstances incident to Defendants'
9 businesses, Defendants are subject to California Labor Code §§ 201-203, 204, 210, 221,
10 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198,
11 2800, 2802, the California Industrial Welfare Commission's ("IWC") Wage Orders, the
12 California Business and Professions Code § 17200, *et seq.*, and the PAGA.

13 17. Plaintiff does not know the true names or capacities of the Defendants sued
14 herein as DOES 1 through 25, inclusive, and, for that reason, said Defendants are sued under
15 such fictitious names. Plaintiff is informed and believe, and based thereon, alleges that each
16 of said fictitious Defendants are and were responsible in some manner for the injuries
17 complained of herein. Plaintiff will amend this Complaint to identify such fictitiously-named
18 Defendants pursuant to Code of Civil Procedure § 474 once their identities become known.

19 18. The relief sought by Plaintiff on behalf of himself and the Class defined below
20 exceeds the minimal jurisdictional limits of the Superior Court and will be established
21 according to proof at trial. The Court has personal jurisdiction over each of the parties because
22 they are either citizens of this State, doing business in this State or otherwise have minimum
23 contacts with this State.

24 19. Venue is proper in this Court because Plaintiff worked in and received his pay
25 in Los Angeles County.

26 20. Plaintiff is informed and believes and, based thereon, alleges that Defendants
27 were at all times relevant hereto members of, and engaged in, a joint venture, partnership,
28 association or common enterprise, and acting within the course and scope of, and in pursuance

of, said joint venture, partnership, association or common enterprise. Furthermore, Plaintiff is informed and believe and, based thereon, alleges that at all times relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or acted as agents or employees of each other with respect to, the commission of the acts complained of herein. Defendants are therefore jointly and severally liable for the injuries complained of herein.

CLASS ALLEGATIONS

21. Plaintiff brings this action pursuant to California Code of Civil Procedure § 382 on behalf of himself and class members defined below. The Plaintiff Class is comprised of and defined as:

Plaintiff Class

All current and former hourly or non-exempt employees of Defendants in California from April 6, 2016 the date of trial, and all current and former exempt employees of Defendants in California from March 13, 2020 to the date of trial.¹

22. Plaintiff also seeks to certify the following Subclass:

Non-Exempt Subclass

All current and former non-exempt employees of Defendants in California from April 6, 2016, to the date of trial.

Exempt Subclass

All current and former exempt employees of Defendants in California from March 13, 2020, to the date of trial.

Non-Exempt Waiting Time Subclass

All members of the Non-Exempt Subclass who separated their employment from April 6, 2017, to the date of trial.

23. Members of the Plaintiff Class described above will be collectively referred to as "Class Members." Plaintiff reserves the right to establish other or additional subclasses, or modify the Plaintiff Class definition, as appropriate based on investigation, discovery, and specific theories of liability.

¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 24. There exists a well-defined community of interest among the Plaintiff Class,
2 and the Plaintiff Class is readily ascertainable.

3 25. The Class Members are so numerous that joinder of all members in a single
4 action would not be feasible or practical, and the amount of individual damages is not large
5 enough to make individual lawsuits by each class member practical or feasible. Plaintiff is
6 informed and believes and based upon such information and belief alleges that there are in
7 excess of 50 Class Members.

8 26. Plaintiff's claims are typical of the claims of the rest of the Plaintiff Class, and
9 Plaintiff and his counsel will fairly and adequately represent the interests of the Class.

10 27. Common issues of fact and/or law predominate in this action over any
11 allegedly individual issues. Specifically, the following common questions of fact or law
12 predominate and make this action superior to individual actions:

13 (i) whether Plaintiff and the rest of the Plaintiff Class are entitled to
14 recover damages, penalties and other relief on the grounds that Defendants have used uniform
15 policies, practices and procedures that have consistently violated California labor laws and
16 regulations and caused Plaintiff and the rest of the Plaintiff Class to suffer the same or similar
17 injuries;

18 (ii) whether Defendants violated Labor Code §§ 204, 210, and the
19 applicable IWC Wage Order by failing to pay wages for all hours worked;

20 (iii) whether Defendants violated Labor Code §§ 1182.12, 1194, 1194.2,
21 1197, 1197.1, 1198 and the applicable IWC Wage Order by failing to pay minimum wage for
22 all hours worked;

23 (iv) whether Defendants violated Labor Code §§ 510, 1194, 1198, and the
24 applicable IWC Wage Order by failing to pay overtime compensation;

25 (v) whether Defendants violated Labor Code § 221 by making unlawful
26 deductions from the wages of Plaintiff and Non-Exempt Subclass Members;

27 (vi) whether Defendants violated Labor Code §§ 226.7, 512, and the
28 applicable IWC Wage Order by failing to provide meal periods for each five hours worked,

1 and not compensating employees with one hour of pay at the employees' regular rate of
2 compensation for each workday that a meal period was not provided;

3 (vii) whether Defendants violated Labor Code § 226.7 and the
4 Applicable Wage Order by failing to provide daily rest periods of ten minutes per four
5 hours or major fraction thereof worked when the shift exceeded three-and-a half hours and
6 by failing to compensate employees one hour's wages in lieu of rest periods;

7 (viii) whether Defendants violated Labor Code §§ 2800, 2802, and the
8 applicable IWC Wage Order by failing to indemnify Plaintiff and Class Members for all the
9 necessary expenditures or losses incurred in direct consequence of the discharge of their
10 duties, or of their obedience to the directions of their employer;

11 (ix) whether Defendants violated Labor Code § 226, and the applicable
12 IWC Wage Order by failing to provide and maintain timely and accurate itemized wage
13 statements;

14 (x) whether Defendants violated Labor Code §§ 201, 202, 203, and 227.3
15 by failing to timely pay Plaintiff and Non-Exempt Waiting Time Subclass members all
16 wages due, including unused, vested vacation wages, upon termination or within seventy-
17 two (72) of resignation; and

18 (xi) whether Defendants' practices constitute unfair, fraudulent, or illegal
19 business practices under Business and Professions Code § 17200, *et seq.*

20 28. California labor laws under which Plaintiff asserts the following causes of
21 action on behalf of himself and the rest of the Plaintiff Class are broadly remedial in nature.
22 These labor laws serve an important public interest in establishing minimum working
23 conditions and standards in California. They furthermore protect employees from exploitation
24 by employers who may seek to take advantage of their superior economic and bargaining
25 power in setting onerous terms and conditions of employment. The class action mechanism
26 is a particularly efficient and appropriate procedure to redress the injuries alleged herein. If
27 each employee in the Plaintiff Class was required to file an individual action, Defendants
28 would be able to use their superior financial and legal resources to gain an unfair advantage

1 over each individual class member. Moreover, requiring each class member to pursue an
2 individual action would also discourage the assertion of meritorious causes of action by
3 employees who would likely be disinclined to file such individual actions due to a justifiable
4 fear of retaliation and damage to their careers at subsequent employment.

5 29. In addition, even if feasible, individual actions by each Plaintiff Class member
6 would create a substantial risk (i) of inconsistent or varying adjudications with respect to the
7 claims of each class member against Defendants, that in turn could establish potentially
8 incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect to
9 individual Plaintiff and Class Members that would, as a practical matter, be dispositive of the
10 interests of the other Plaintiff and Class Members. Furthermore, the claims of each individual
11 class member are not sufficiently large enough to make it economically feasible to bring each
12 class member's claims on an individual basis.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY EARNED WAGES**

15 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

16 **(Cal. Labor Code §§ 204, 210)**

17 30. Plaintiff re-alleges and incorporates herein by this reference each and every
18 allegation set forth in all previous paragraphs of the Complaint.

19 31. Labor Code § 204 provides that all wages earned by an employee are due and
20 payable twice during each calendar month.

21 32. Defendants failed to timely pay Plaintiff and Non-Exempt Subclass Members
22 all of their earned wages as required by Labor Code Section 204.

23 33. Plaintiff and Non-Exempt Subclass Members have been deprived of their
24 rightfully earned wages as a direct and proximate result of Defendants' failure to pay said
25 compensation. Plaintiff and Non-Exempt Subclass Members are entitled to recover such
26 amounts, plus interest thereon, attorney's fees and costs.

27 34. In addition, Plaintiff and Non-Exempt Subclass Members are entitled to
28 penalties pursuant to Labor Code § 210 as follows: (1) for Defendants' initial violation, \$100

1 for each failure to pay each Non-Exempt Subclass Members; and (2) for each of Defendants’
2 subsequent violations, or any willful or intentional violation, \$200 for each failure to pay each
3 Non-Exempt Subclass Members, plus 25 percent of the amount unlawfully held.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

7 **(Cal. Labor Code §§ 510, 1182.12, 1194, 1197, 1197.1, 1198)**

8 35. Plaintiff re-alleges and incorporates herein by this reference each and every
9 allegation set forth in all previous paragraphs of the Complaint.

10 36. Labor Code section 1194(a) states: “Notwithstanding any agreement to work
11 for a lesser wage, any employee receiving less than the legal minimum wage or the legal
12 overtime compensation applicable to the employee is entitled to recover in a civil action the
13 unpaid balance of the full amount of this minimum wage or overtime compensation, including
14 interest thereon, reasonable attorney’s fees, and costs of suit.”

15 37. Labor Code section 1194.2 states: “In any action under Section 98, 1193.6,
16 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum
17 wage fixed by an order of the commission or by statute, an employee shall be entitled to
18 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
19 thereon.”

20 38. Labor Code section 1194.2 provides for liquidated damages equal to
21 unlawfully unpaid minimum wages, with interest.

22 39. Labor Code section 1197 states: “The minimum wage for employees fixed by
23 the commission is the minimum wage to be paid to employees, and the payment of a less wage
24 than minimum wage so fixed is unlawful.”

25 40. Labor Code section 1197.1 states: “Any employer or other person acting either
26 individually or as an officer, agent, or employee of another person, who pays or causes to be
27 paid to any employee a wage less than the minimum fixed by an order of the commission shall
28 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee,

1 and any applicable penalties imposed pursuant to Section 203. For any initial violation that is
2 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each
3 pay period for which the employee is underpaid. For each subsequent violation for the same
4 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
5 period for which the employee is underpaid regardless of whether the initial violation is
6 intentionally committed.”

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

12 42. Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of
13 the applicable IWC Wage Order, an employer may not pay employees less than the applicable
14 minimum wage for all hours worked, and provides that an employer may not pay non-exempt
15 employees less than the applicable overtime rate for all overtime hours worked.

16 43. During the relevant time period, Defendants regularly failed to pay at least
17 minimum wage to Plaintiff and Non-Exempt Subclass Members for all hours worked pursuant
18 to Labor Code §§ 1194 and 1197.

19 44. Defendants’ failure to pay Plaintiff and Non-Exempt Subclass Members the
20 minimum wage as required violates Labor Code §§ 1194 and 1197.

21 45. As a direct result, Plaintiff and Non-Exempt Subclass Members have suffered
22 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
23 including lost interest on such monies and expenses and attorney’s fees in seeking to compel
24 Defendants to fully perform their obligation under state law, all to their respective damage in
25 amounts according to proof at trial and within the jurisdictional limitations of this Court.

26 46. Defendants’ unlawful acts deprived Plaintiff and Non-Exempt Subclass
27 Members of minimum wages in amounts to be determined at trial, and they are entitled to
28 recover these amounts, along with liquidated damages for unpaid regular or minimum wages,

1 interest, attorneys' fees, and costs.

2 47. Plaintiff seeks to recover the full amount of the unpaid wages resulting from
3 Defendants' minimum wage violations including interest thereon, reasonable attorney's fees
4 and costs of suit, penalties, and liquidated damages to the fullest extent permissible including
5 those permitted pursuant to Labor Code sections 218.6, 1194, 1194.2, 1197.1, and Code of
6 Civil Procedure section 1021.5.

7
8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME COMPENSATION**

10 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

11 **(Cal. Labor Code §§ 510, 1198)**

12 48. Plaintiff re-alleges and incorporates herein by this reference each and every
13 allegation set forth in all previous paragraphs of the Complaint.

14 49. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
15 unlawful to employ persons without compensating them at a rate of pay either one and one-
16 half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
17 or days worked by the person on a daily or weekly basis.

18 50. Specifically, section 3 of applicable IWC Wage Order provides that
19 Defendants are and were required to pay overtime compensation to Plaintiff and Non-Exempt
20 Subclass Members at the rate of one and one-half times (1½) their regular rate of pay when
21 working and for all hours worked in excess of eight (8) hours in a day or more than forty (40)
22 hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a
23 workweek.

24 51. Section 4 of the applicable IWC Wage Order further provide that Defendants
25 are and were required to pay overtime compensation to Plaintiff and Non-Exempt Subclass
26 Members at a rate of two times their regular rate of pay when working and for all hours worked
27 in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of
28 work in a workweek.

52. Labor Code § 510 codifies the right to overtime compensation at one and one-

1 half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day
2 or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive
3 day of work, and overtime compensation at twice the regular hourly rate for hours worked in
4 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
5 of work in a workweek.

6 53. Labor Code § 510 and the applicable IWC Wage Order provide that
7 employment of more than six days in a workweek is only permissible if the employer pays
8 proper overtime compensation as set forth herein.

9 54. During the relevant time period, Defendants failed to pay Plaintiff and Non-
10 Exempt Subclass Members overtime wages for all overtime hours worked when Plaintiff and
11 Non-Exempt Subclass Members worked in excess of eight (8) hours in a day, forty (40) hours
12 in a week and/or for a seventh consecutive day of work in a workweek.

13 55. In violation of state law, Defendants knowingly and willfully refused to
14 perform their obligations and compensate Plaintiff and Non-Exempt Subclass Members for
15 all wages earned and all hours worked.

16 56. Defendants' failure to pay Plaintiff and Non-Exempt Subclass Members the
17 unpaid balance of overtime compensation, as required by California law, violates the
18 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

19 57. As a direct result, Plaintiff and Non-Exempt Subclass Members have suffered
20 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
21 including lost interest on such monies and expenses and attorney's fees in seeking to compel
22 Defendants to fully perform their obligation under state law, all to their respective damage in
23 amounts according to proof at trial and within the jurisdictional limitations of this Court.

24 58. Defendants' unlawful acts deprived Plaintiff and Non-Exempt Subclass
25 Members of minimum and/or overtime wages in amounts to be determined at trial, and they
26 are entitled to recover these amounts, along with liquidated damages for unpaid regular or
27 minimum wages, interest, attorneys' fees, and costs.

28 59. Pursuant to Labor Code § 1194, Plaintiff and Non-Exempt Subclass Members

1 are entitled to recover their unpaid overtime compensation as well as interest, costs, and
2 attorneys' fees.

3 **FOURTH CAUSE OF ACTION**

4 **UNLAWFUL DEDUCTION OF WAGES**

5 **(Violation of Cal. Labor Code § 221)**

6 60. Plaintiff re-alleges and incorporates herein by this reference each and every
7 allegation set forth in all previous paragraphs of the Complaint.

8 61. Labor Code § 221 provides, in pertinent part, "[i]t shall be unlawful for any
9 employer to collect or receive from an employee any part of wages theretofore paid by said
10 employer to said employee."

11 62. During the relevant time period, Defendants unlawfully deducted the wages of
12 Plaintiff and Non-Exempt Subclass Members by illegally deducting from the commissions
13 earned by Plaintiff and Non-Exempt Subclass Members in violation of Labor Code § 221.

14 63. Defendants' violation of Labor Code § 221 caused Plaintiffs and class
15 members to suffer substantial monetary losses, and expenses and attorney's fees in seeking to
16 compel Defendants to fully perform their obligations under California law, all to their damage
17 in amounts according to proof at the time of trial.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL BREAKS**

20 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

21 **(Cal. Labor Code §§ 226.7, 512(a), 1198)**

22 64. Plaintiff re-alleges and incorporates herein by this reference each and every
23 allegation set forth in all previous paragraphs of the Complaint.

24 65. Labor Code § 226.7 provides that no employer shall require an employee to
25 work during any meal period mandated by the IWC Wage Orders.

26 66. Section 11 of applicable IWC Wage Order states, "[n]o employer shall employ
27 any person for a work period of more than five (5) hours without a meal period of not less
28 than 30 minutes."

67. Labor Code § 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes.

68. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes.

69. Labor Code § 226.7(c) and section 11 of applicable IWC Wage Order requires an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided.

70. At times during the relevant time period, Defendants failed to provide Plaintiff and Non-Exempt Subclass Members with complaint meal periods. Defendants did not properly pay meal period premiums for missed or non-compliant meal periods pursuant to Labor Code § 226.7(c) and section 11 of the applicable IWC Wage Order.

71. As a result of Defendants' failure to pay Plaintiff and Non-Exempt Subclass Members an additional hour of pay for each day a compliant meal period was not provided at their regular rate of pay, Plaintiff and Non-Exempt Subclass Members suffered and continue to suffer a loss of wages and compensation. Because Defendants failed to provide meal periods, they are liable to Plaintiff and Non-Exempt Subclass Members for one hour of additional premium pay at the regular rate of compensation for each workday that the meal periods were not provided, pursuant to Labor Code section 226.7 and the applicable IWC Wage Order, section 11(B).

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

73. Defendants' unlawful acts deprived Plaintiff and Non-Exempt Subclass

Members of premium wages and/or other compensation in amounts to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

74. Plaintiff seeks to recover in a civil action the full amount of the unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and Code of Civil Procedure section 1021.5.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

(Cal. Labor Code §§ 2267, 1198)

75. Plaintiff re-alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

76. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

77. Section 12 of the applicable IWC Wage Order states "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" and 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" unless the total daily work time is less than three and one-half (3½) hours.

78. During the relevant time period, Plaintiff and Non-Exempt Subclass Members did not receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

79. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

80. At all relevant times, Defendants failed to pay Plaintiff and Non-Exempt

1 Subclass Members all rest period premiums due, at their regular rate of compensation, for
2 rest period violations pursuant to Labor Code § 226.7(b) and section 12 of the applicable
3 IWC Wage Order.

4 81. As a result of Defendants' failure to pay Plaintiff and Non-Exempt Subclass
5 Members an additional hour of pay at their regular rate of compensation for each day a rest
6 period was not provided, Plaintiff and Non-Exempt Subclass Members suffered and
7 continue to suffer a loss of wages and compensation.

8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

10 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

11 **(Cal. Labor Code §§ 2000, 2802)**

12 82. Plaintiff re-alleges and incorporates herein by this reference each and every
13 allegation set forth in all previous paragraphs of the Complaint as if fully set forth herein.

14 83. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
15 indemnify his employee for losses caused by the employer's want of ordinary care."

16 84. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify
17 his or her employee for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties..."

19 85. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the
20 term 'necessary expenditures or losses' shall include all reasonable costs, including but not
21 limited to, attorney's fees incurred by the employee enforcing the rights granted by this
22 section."

23 86. The applicable IWC Wage Order § 9 provides that: "When tools or equipment
24 are required by the employer or are necessary to the performance of a job, such tools and
25 equipment shall be provided and maintained by the employer . . ."

26 87. California Labor Code section 2804 mandates that this statutory right cannot
27 be waived.

28

1 88. During the relevant time period, Defendants were required to indemnify and
2 reimburse Plaintiff and Class Members for all expenditures or losses caused by the employer's
3 want of ordinary care and/or incurred in direct consequent of the discharge of their duties, but
4 failed to indemnify and reimburse Plaintiff and Class Members for all expenditures or losses.

5 89. As a direct and proximate result, Plaintiff and Class Members have suffered,
6 and continue to suffer, substantial losses, related to the use and enjoyment of such monies to
7 be reimbursed, lost interest on such monies, and expenses and attorney's fees in seeking to
8 compel Defendants to fully perform their obligations under California law, all to their damage
9 in amounts according to proof at the time of trial.

10 90. Accordingly, Plaintiff and Class Members are entitled to recover, and hereby
11 seek, an amount equal to incurred necessary expenditures, pre- and post-judgment interest,
12 applicable penalties, attorneys' fees and costs, and any further equitable relief this Court may
13 deem just and proper.

14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE AND MAINTAIN**

16 **ACCURATE AND ITEMIZED WAGE STATEMENTS**

17 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

18 **(Cal. Labor Code § 226(a), 1174(d), 1198)**

19 91. Plaintiff re-alleges and incorporates herein by this reference each and every
20 allegation set forth in all previous paragraphs of the Complaint.

21 92. Labor Code section 226(a) states in pertinent part: "Every employer shall,
22 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
23 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
24 separately when wages are paid by personal check or cash, an accurate itemized statement in
25 writing showing": (1) gross wages earned; (2) total hours worked by the employee, except for
26 any employee whose compensation is solely based on a salary and who is exempt from
27 payment of overtime under subdivision (a) of Section 515 or any applicable order of the
28 Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable

1 piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all
2 deductions made on written orders of the employee may be aggregated and shown as one item;
3 (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7)
4 the name of the employee and only the last four digits of his or her social security number or
5 an employee identification number other than a social security number; (8) the name and
6 address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by
8 the employee. The deductions made from payment of wages shall be recorded in ink or other
9 indelible form, properly dated, showing the month, day, and year, and a copy of the statement
10 and the record of the deductions shall be kept on file by the employer for at least three years
11 at the place of employment or at a central location within the State of California.”

12 93. The applicable IWC Wage Order, section 7(A) states in relevant part that the
13 employer shall keep accurate information regarding, “(4) Total wages paid each payroll
14 period, including value of board, lodging, or other compensation actually furnished to the
15 employee; (5) Total hours worked in the payroll period and applicable rates of pay.”

16 94. Defendants have intentionally and willfully failed to provide Plaintiff and Non-
17 Exempt Subclass Members with complete and accurate wage statements. The deficiencies
18 include, among other things, the failure to list the gross wages earned, net wages earned, and
19 all hours worked.

20 95. As a result of Defendants’ violation of California Labor Code § 226(a),
21 Plaintiff and Non-Exempt Subclass Members have suffered injury and damage to their
22 statutorily protected rights. Specifically, Plaintiff and Non-Exempt Subclass Members have
23 been injured by Defendants’ knowing and intentional violation of California Labor Code §
24 226(a) because they were denied both their legal right to receive, and their protected interest
25 in receiving, accurate itemized wage statements under California Labor Code § 226(a). In
26 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
27 Defendants have prevented Plaintiff and Non-Exempt Subclass Members from determining if
28 all hours worked were paid at the appropriate rate and the extent of the underpayment.

1 Plaintiff has had to file this lawsuit in order to analyze whether in fact Plaintiff was paid
2 correctly and the extent of the underpayment, thereby causing Plaintiff to incur expenses and
3 lost time. Plaintiff would not have had to engage in these efforts and incur these costs had
4 Defendants provided the accurate rate of pay. This has also delayed Plaintiff's ability to
5 demand and recover the underpayment of wages from Defendants.

6 96. Labor Code section 226(e) states: "An employee suffering injury as a result of
7 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
8 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
9 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
10 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
11 and is entitled to an award of costs and reasonable attorneys' fees."

12 97. Labor Code section 226(e)(2)(B) states: "An employee is deemed to suffer
13 injury for purposes of this subdivision if the employer fails to provide accurate and complete
14 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a)
15 and the employee cannot promptly and easily determine from the wage statement alone one
16 or more of the following: (i) The amount of gross wages or net wages paid to the employee
17 during the pay period or any other information required to be provided on the itemized wage
18 statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)..." Because
19 Plaintiff's wage statements did not include, among other things, an accurate accounting of
20 gross wages earned or the accurate total hours worked, he is deemed to have suffered injury.

21 98. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
22 and Non-Exempt Subclass Members from knowing, understanding and disputing the wages
23 paid to them, and resulted in an unjustified economic enrichment to Defendants. As a result
24 of Defendants' knowing and intentional failure to comply with California Labor Code §
25 226(a), Plaintiff and Non-Exempt Subclass Members have suffered an injury, the exact
26 amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

101. As a direct result of Defendants' violations alleged herein, Plaintiff and Non-Exempt Subclass Members have suffered, and continue to suffer, injury including substantial losses related to the use and enjoyment of such wages, lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

NINTH CAUSE OF ACTION

**FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF
EMPLOYMENT INCLUDING UNUSED, VESTED VACATION WAGES**

(Cal. Labor Code §§ 201, 202, 203, 227.3)

104. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his wages shall

1 become due and payable not later than seventy-two (72) hours thereafter, unless the
2 employee has given seventy-two (72) hours previous notice of his intention to quit, in which
3 case the employee is entitled to his wages at the time of quitting.

4 105. Labor Code § 227.3 provides that when an employee is terminated without
5 having taken off his or her vested vacation time, all vested vacation shall be paid to said
6 employee as wages at the final rate of pay upon termination.

7 106. During the relevant time period, Defendants willfully failed to pay Plaintiff
8 and Non-Exempt Waiting Time Subclass members all their earned wages upon termination
9 including, but not limited to, minimum, regular, and overtime wages, and all unused, vested
10 vacation wages, either at the time of discharge or within seventy-two (72) hours of their
11 leaving Defendants' employ.

12 107. Defendants' failure to pay Plaintiff and Non-Exempt Waiting Time Subclass
13 members all their earned wages at the time of discharge or within seventy-two (72) hours
14 of their leaving Defendants' employ is in violation of Labor Code §§ 201, 202, and 227.3.

15 108. Labor Code § 203 provides that if an employer willfully fails to pay wages
16 owed immediately upon discharge or resignation, then the wages of the employee shall
17 continue as a penalty from the due date at the same rate until paid or until an action is
18 commenced; but the wages shall not continue for more than thirty (30) days.

19 109. Plaintiff and Non-Exempt Waiting Time Subclass members are entitled to
20 recover from Defendants the statutory penalty which is defined as Plaintiff's and Non-
21 Exempt Waiting Time Subclass members' regular daily wages for each day they were not
22 paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to Labor
23 Code § 203.

24 **TENTH CAUSE OF ACTION**

25 **VIOLATION OF THE UNFAIR COMPETITION LAW**

26 **(California Business & Professions Code § 17200, et seq.)**

27 110. Plaintiff re-alleges and incorporates herein by this reference each and every
28 allegation set forth in all previous paragraphs of the Complaint.

1 111. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
2 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice
3"

4 112. A violation of California Business and Professions Code §§ 17200, *et seq.* may
5 be predicated on the violation of any state or federal law. In the instant case, Defendants'
6 policies and practices have violated state law causing Plaintiff and Class Members to suffer
7 and continue to suffer injuries in fact. As alleged herein, Defendants systematically engaged
8 in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as
9 failing to timely pay all minimum, regular, and overtime wages, failing to provide meal
10 periods or provide premium wages at the regular rate of pay in lieu of, failing to reimburse
11 business expenses, failing to furnish accurate itemized wage statements, and failing to timely
12 pay all wages upon separation of employment, including unused, but vested vacation wages.

13 113. This cause of action is brought under Business and Professions Code sections
14 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action
15 and pursuant to Business and Professions Code section 17208, Plaintiff and Class Members
16 seek restitution of wages and expenses, where such amounts were due each of the class
17 members during the Class Period, commencing up to four (4) years prior to filing of this
18 complaint, according to proof.

19 114. As a result of Defendants' violations of the California Labor Code and IWC
20 Wage Orders, Plaintiff and Class Members suffered a loss of wages and monies, all in an
21 amount to be shown according to proof at trial.

22 115. Defendants' violations of the California Labor Code and IWC Wage Orders
23 constitute violations of the UCL.

24 116. Plaintiff meets the standing requirements for seeking relief pursuant to
25 Business and Professions Code Section 17203, in that he has suffered an injury in fact and has
26 lost money as a result of Defendants' policies, practices and procedures, as more fully set forth
27 elsewhere in this pleading.
28

117. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff and Class Members are entitled to restitution of all unpaid wages and expenses in an amount to be shown according to proof at trial.

118. Plaintiff and Class Members seek to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to class members and to the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

ELEVENTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")

119. Plaintiff hereby re-alleges and incorporate by reference all paragraphs above, as though fully set forth herein.

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

121. Defendants' conduct violates numerous Labor Code sections including, but not limited to, the following:

(a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 227.3, 510, 511, 558, 1182.12, 1194, 1197 and 1198 for failure to timely pay all earned wages (including minimum wages and overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment, including vested vacation wages, as herein alleged;

(b) Violation of Labor Code §§ 221 and 225.5 for the unlawful deduction of wages owed to Plaintiff and other aggrieved employees;

1 (c) Violation of Labor Code § 246 by willfully failing to provide
2 mandatory paid sick leave to Plaintiff and other aggrieved employees;

3 (d) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal
4 periods to Plaintiff and other aggrieved employees and failure to pay premium wages
5 for missed meal periods as herein alleged;

6 (e) Violation of Labor Code § 226.7 for failure to permit rest breaks to
7 Plaintiff and other aggrieved employees and failure to pay premium wages for missed
8 rest periods as herein alleged;

9 (f) Violation of Labor Code §§ 226 and 226.3 for failure to provide
10 accurate itemized wage statements to Plaintiff and other aggrieved employees as
11 herein alleged; and

12 (g) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse
13 reasonable and necessary business expenses of Plaintiff and other aggrieved
14 employees as herein alleged.

15 122. Plaintiff is an “aggrieved employee” because he was employed by the alleged
16 violator and had one or more of the alleged violations committed against them, and therefore
17 is properly suited to represent the interests of all other aggrieved employees.

18 123. Plaintiff has exhausted the procedural requirements under Labor Code §
19 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
20 himself and all other aggrieved employees under PAGA.

21 124. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
22 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
23 aggrieved employee per pay period for each subsequent violation.

24 125. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled
25 to recover civil penalties, in addition to other remedies, for violations of the Labor Code
26 sections cited above.

27 126. For bringing this action, Plaintiff is entitled to attorney’s fees and costs
28 incurred herein.

PRAYER

WHEREFORE, Plaintiff prays for judgment on behalf of himself and the Class against all Defendants, as follows:

ON THE FIRST CAUSE OF ACTION

1. For all unpaid earned wages and penalties;
2. For all actual, consequential, and incidental losses and damages, according to proof;
3. For prejudgment interest; and
4. For reasonable attorneys' fees and costs under Labor Code § 218.5.

ON THE SECOND CAUSE OF ACTION

1. For all underpaid wages;
2. For liquidated damages pursuant to Labor Code § 1194(a);
3. For prejudgment interest; and
4. For reasonable attorneys' fees and costs under Labor Code § 1194.

ON THE THIRD CAUSE OF ACTION

1. For unpaid overtime wages and penalties;
2. For prejudgment interest; and
3. For reasonable attorneys' fees and costs under Labor Code § 1194.

ON THE FOURTH CAUSE OF ACTION

1. For the wages which were unlawfully deducted from the wages of the Plaintiff and the Class; and
2. For prejudgment interest; and
3. For reasonable attorneys' fees and costs.

ON THE FIFTH CAUSE OF ACTION

1. For unpaid wage premiums for failing to provide compliant meal periods and penalties;
2. For prejudgment interest; and
3. For reasonable attorneys' fees and costs under Labor Code § 218.5.

ON THE SIXTH CAUSE OF ACTION

1. For unpaid wage premiums for failing to provide compliant rest periods and penalties;
2. For prejudgment interest; and
3. For reasonable attorneys' fees and costs under Labor Code § 218.5

ON THE SEVENTH CAUSE OF ACTION

1. For the unreimbursed expenses incurred by Plaintiffs and the Class;
2. For prejudgment interest; and
3. For reasonable attorneys' fees and costs under Labor Code § 2802.

ON THE EIGHTH CAUSE OF ACTION

1. For damages and penalties under Labor Code § 226(e);
2. For prejudgment interest; and
2. For reasonable attorneys' fees and costs under Labor Code § 226(e).

ON THE NINTH CAUSE OF ACTION

1. For the wages of each Class Member who is no longer employed by Defendants at their regular daily rate up to a maximum of thirty (30) days;
2. For prejudgment interest; and
3. For reasonable attorneys' fees.

ON THE TENTH CAUSE OF ACTION

1. For restitution of all unpaid wages, overtime and other monies withheld from Plaintiffs and the rest of the Class as a result of Defendants' unfair, unlawful or fraudulent business practices; and
2. For reasonable attorneys' fees and costs under Code of Civil Procedure § 1021.5.

ON THE ELEVENTH CAUSE OF ACTION

1. Civil penalties pursuant to Labor Code § 558:
 - a. \$50 for each underpaid employee for each pay period per violation; and

b. \$100 per employee per pay period for subsequent violations per violation;
and

2. Civil penalties pursuant to Labor Code § 2699(f):

a. \$100 for each aggrieved employee per pay period for the initial violation
per violation; and

b. \$200 for each aggrieved employee per pay period for each subsequent
violation per violation; and

3. For other penalties under PAGA as allowed as the court may deem
appropriate; and

4. Attorneys' fees and costs litigation expenses pursuant to Labor Code section
2699(g) and/or Code of Civil Procedure section 1021.5.

ON ALL CAUSES OF ACTION

1. For certification of the action as a class action;

2. For attorneys appearing on the above caption to be named class counsel and
for named Plaintiff to be appointed class representative;

3. A declaratory judgment that the practices complained of in this Complaint are
unlawful under California Law;

4. For penalties under PAGA, 75% of which will be paid to the LWDA and 25%
of which will distributed to the aggrieved employees;

5. For reasonable attorneys' fees under the California Labor Code and all related
statutes, including California Code of Civil Procedure § 1021;

6. For costs of the suit incurred herein; and

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1 7. For such further relief as the Court may deem appropriate.

2 DATED: January 31, 2022

Lebe Law, APLC

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4 By: _____


Jonathan M. Lebe
Zachary T. Gershman
Nicolas W. Tomas

5
6
7 Attorney for Plaintiff Jason Mitchiner
8 individually and on behalf of all other similarly
9 situated

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands a trial by jury on all claims so triable.

12 DATED: January 31, 2022

Lebe Law, APLC

13
14 By: _____


Jonathan M. Lebe
Zachary T. Gershman
Nicolas W. Tomas

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17 Attorney for Plaintiff Jason Mitchiner
18 individually and on behalf of all other similarly
19 situated
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