

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
ARSINÉ GRIGORYAN (SBN 319517)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7502

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Motion for Approval of Class Settlement
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MAYALL HURLEY P.C.
ROBERT J. WASSERMAN (SBN: 258538)
rwasserman@mayallaw.com
WILLIAM J. GORHAM (SBN: 151773)
wgorham@mayallaw.com
JENNY D. BAYSINGER (SBN: 251014)
jbaysinger@mayallaw.com
2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

JANET UGALE and JOBANY RODRIGUEZ,
individually, and on behalf of other members of
the general public similarly situated and on behalf
of aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiffs,

v.

ALLEN DISTRIBUTION, LP, a Pennsylvania
limited partnership; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: STK-CV-UOE-2020-0005807

DECLARATION OF JENNY D. BAYSINGER
IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

Date: _____, 2021

Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara A. Kronlund

I, Jenny D. Baysinger, declare:

1. I am an attorney duly licensed to practice before all the courts of this state and am a
shareholder of Mayall Hurley P.C., co-counsel for Plaintiffs Janet Ugale ("Ugale") and Jobany

1 Rodriguez (“Rodriguez”), individually and on behalf of other members of the general public similarly
2 situated and on behalf of aggrieved employees pursuant to the Private Attorneys General Act
3 (“PAGA”) (collectively, “Plaintiffs”).

4 2. I have personal knowledge of the matters set forth herein and, if called upon to do so,
5 could and would competently testify thereto under oath.

6 **Procedural History**

7 3. My office began representing Plaintiff Rodriguez in June 2020.

8 4. On June 11, 2020, my office provided written notice to the Labor and Workforce
9 Development Agency (“LWDA”) and Defendant Allen Distribution, L.P. (“Defendant” or “Allen”) on
10 behalf of Rodriguez regarding specific provisions of the Labor Code alleged to have been violated by
11 Allen as to Plaintiff Rodriguez and Allen’s other non-exempt California employees, including the facts
12 and theories to support those alleged violations.

13 5. On June 16, 2020, my office filed a Class and Collective Action Complaint in the
14 United States District Court, Eastern District of California Case number 2:20-cv-01202-KJM-CKD
15 (the “*Rodriguez* Class Action”).

16 6. On July 8, 2020, Plaintiff Ugale filed a Class Action Complaint for Damages in this
17 Court (the “*Ugale* Class Action”)

18 7. On August 21, 2020, after the 65-day notice period required by California Labor Code
19 section 2699.3 elapsed, my office filed a First Amended Class and Collective Action Complaint in the
20 *Rodriguez* Class Action in order to add a claim to assess and collect civil penalties pursuant to the
21 PAGA.

22 8. On August 28, 2020, Allen removed the *Ugale* Class Action to the United States
23 District Court, Eastern District of California.

24 9. In early September 2020, my office and counsel for Allen began discussing the
25 prospect of early mediation. In connection with those discussions, we became aware of the pending
26 and related *Ugale* Class Action and began conferring with counsel Douglas Han and Shunt Tatavos-
27 Gharajeh of the Justice Law Corporation regarding the prospect of joint mediation and joint
28 representation.

1 10. On September 17, 2020, my office propounded formal written discovery on Allen in the
2 *Rodriguez* Class Action consisting of Interrogatories, Requests for Admission, and Requests for
3 Production of Documents.

4 11. On September 25, 2020, Plaintiff Ugale filed a motion to remand the *Ugale* Class
5 Action to this Court.

6 12. In the fall of 2020, the parties in the *Rodriguez* Class Action and the *Ugale* Class
7 Action agreed to a joint mediation with experienced employment class action mediator Marc Feder.

8 13. In light of the agreement to mediate, the Parties agreed that formal discovery would be
9 stayed and, instead, Allen would provide documents, data points, and an agreed upon 20% sampling of
10 the time and payroll records of putative class members informally pre-mediation.

11 14. In January 2021, and in order to facilitate the global mediation, my office entered into a
12 co-counsel agreement with the Justice Law Corporation (collectively with Mayall Hurley, P.C., “Class
13 Counsel”) to jointly represent named Plaintiffs Ugale and Rodriguez and the putative classes in each
14 pending action.

15 15. In February 2021, Allen provided hundreds of pages of policy documents, as well as
16 nearly 34,000 line items of data (each with multiple individual data points) comprising the time and
17 payroll records of Plaintiff Ugale, Plaintiff Rodriguez, and a 20% sampling of the putative class.

18 16. The Parties participated in a full-day mediation with Marc J. Feder on March 4, 2021.
19 At the conclusion of the mediation, a settlement in principle was reached based on a mediator’s
20 proposal.

21 **Investigation, Discovery**

22 17. Through independent inquiry, research, formal and informal discovery, Class Counsel
23 thoroughly and diligently investigated and pursued the claims asserted in both the *Rodriguez* Class
24 Action and the *Ugale* Class Action. My office and co-counsel made a concerted effort to secure
25 sufficient information to allow us to intelligently evaluate potential claims on both a PAGA-
26 representative and class-wide basis. This process included, but was not limited to, (1) obtaining and
27 reviewing Plaintiff’s personnel files, payroll records, and time records; (2) researching Defendant, its
28 organization and operations within California; (3) researching the existence of other pending actions;

1 (4) identifying, researching, and pleading the appropriate claims, including adding potential claims as
2 additional information has been discovered; (5) exhausting administrative remedies; (6) identifying,
3 requesting, securing, and reviewing pertinent policies, practices, and procedures; (7) identifying,
4 requesting, and securing time and payroll records for a random 20% sampling of putative class
5 members; (8) propounding formal discovery to secure relevant policy documents and numerical
6 information regarding the size of the classes and the scope of the claims, (9) retaining an expert to
7 analyze the data provided by Defendant and personally conducting spot checks to ensure the accuracy
8 of the damages calculations; (10) creating a reliable damages model; and (11) developing and
9 implementing a strategy for mediation and settlement.

10 18. Between September 2020 and the present, the Parties engaged in formal discovery, as
11 well as informal data and information exchange.

12 19. In advance of mediation, Allen provided more than 100 pages of policy documents,
13 along with all time and payroll records for an agreed upon 20% sampling of the putative class for the
14 time period June 16, 2016 through January 29, 2021. In addition, the Parties spoke at length about the
15 strengths and weaknesses of each sides' claims and defenses, the certifiability of the claims, and the
16 scope of Defendant's potential liability.

17 20. Class Counsel and their retained expert were able to use the data sampling provided to
18 extrapolate potential damages exposure over the entire Class Period for all Class Members.

19 21. Class Counsel retained EconOne, a qualified and experienced data analysis firm, to
20 analyze the data and create a damages model for use during the mediation. This included providing
21 full evaluation of all of the data provided, and extrapolation of that data as relevant to determine
22 Defendant's exposure.

23 22. Prior to the mediation, co-counsel and my office had multiple discussions with our
24 retained expert to ensure the parameters of the analysis were appropriate and accurate and the to
25 confirm the reliability of the damages model. I also personally spot-checked a number of calculations
26 to ensure their accuracy.

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Settlement Negotiations and Mediation

23. The Parties attended a full-day mediation with Marc J. Feder on March 4, 2021.

24. After nearly ten (10) hours of negotiations, Mr. Feder presented a mediator's proposal that was ultimately accepted by all Parties. On March 21, 2021, the Parties executed a Memorandum of Understanding.

25. In order to facilitate the negotiated resolution, and pursuant to stipulation of the Parties, on June 23, 2021 the *Ugale* Class Action was remanded to this Court. On August 3, 2021, in order to facilitate the Settlement, a First Amended Class Action Complaint for Damages in this *Ugale* Class Action was filed pursuant to stipulation (the "*Ugale* FAC").

26. Through the operative *Ugale* FAC, Plaintiff Rodriguez was added as an additional named plaintiff. Nine (9) causes of action are asserted on a class-wide basis, including 1) unpaid overtime, 2) unpaid meal period premiums, 3) unpaid rest period premiums, 4) unpaid minimum wages, 5) final wages not timely paid, 6) non-compliant wage statements, 7) conversion – failure to pay wages, 8) unreimbursed business expenses, and 9) unlawful business practices in violation of California Business & Professions Code §§ 17200, et seq. (the "Class Claims"). The *Ugale* FAC also contains a cause of action seeking to assess and collect civil penalties pursuant to the Private Attorneys' General Act of 2004 (the "PAGA Claims") based on the alleged violations of the Labor Code that underlie the Class Claims *and* other alleged Labor Code violations.

27. The Parties contemplate that the *Rodriguez* Class Action will be dismissed, with prejudice, after final approval of the Settlement.

28. After months of additional negotiations regarding the terms of a long-form settlement agreement, on June 3, 2021, the Parties agreed to and executed the Joint Stipulation of Class and Representative Action Settlement and Release ("Settlement Agreement" or "SA"), a true and correct, fully executed copy of which is attached as **Exhibit 1** hereto.

29. Through the SA, Defendant has agreed to pay Six Hundred Fifty-Eight Thousand Nine Hundred Eighty Dollars (\$658,980.00) (the "Maximum Settlement Amount" or "MSA") to resolve both Class Claims and claims to assess and collect civil penalties pursuant to the PAGA. Forty

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1 Thousand Dollars (“\$40,000.00) of the MSA has been allocated to resolve PAGA claims, with the
2 remaining \$618,980.00 allocated to the resolution of Class Claims.

3 30. Class claims are asserted/resolved on behalf of one (1) distinct class and one (1) sub-
4 class; namely a Settlement Class consisting of all current and former non-exempt California
5 employees employed directly by Defendant at any time between June 16, 2016 and May 4, 2021 and a
6 Former Employee Sub-Class consisting of all Settlement Class Members whose employment ended
7 between June 16, 2017 and May 4, 2021.

8 31. It is presently believed that there are 325 members of the Class and that they worked a
9 total of 17,370 workweeks during the Class Period. SA at ¶ 53.

10 32. There was no fraud or collusion at the mediation with Mr. Feder or the in the
11 subsequent settlement negotiations, all of which were adversarial and conducted at arms’ length.

12 **Class Counsel’s Damages Analysis and Valuation of the Class Claims**

13 33. The Settlement Agreement represents a compromise of highly disputed claims. Allen
14 vigorously denies Plaintiffs’ allegations in their entirety, denies that certification is appropriate (except
15 for settlement purposes), contends it has complied with the law, and asserts numerous affirmative
16 defenses, both legal and factual.

17 34. This litigation, including the *Rodriguez* Class Action the instant *Ugale* Class Action,
18 and the Settlement have and will result in substantial benefits to all Class Members.

19 35. Not only will the Settlement provide monetary relief to the Class Members, but
20 Defendant audited its policies, practices, and procedures to ensure compliance with California law in
21 response to the litigation. SA ¶ 11.

22 36. As a result of these changes, Class Members who are still employees of Allen are not
23 expected to be subjected to ongoing violations of California law. This benefit is in addition to the
24 cognizable monetary relief Class Members will receive pursuant to the Settlement.

25 37. Reviewing and analyzing the time and payroll data in the sampling, my office and our
26 retained expert developed a damages model, pre-mediation, illustrating Defendant’s maximum
27 exposure. Class Counsel also evaluated the maximum damages against the defenses asserted by Allen,
28 and the likelihood of success of some of Allen’s arguments to determine a more realistic and

1 reasonable anticipated damages exposure. This damages model informed the Lawsuit and the
2 settlement negotiations.

3 **Maximum Class Damages**

4 38. The Class effectively has five (5) independent claims that comprise its potential
5 recovery, 1) a claim for failure to pay minimum wage/OT as a result of an allegedly unlawful rounding
6 policy, 2) failure to provide compliant meal/rest periods, 3) failure to properly calculate and pay sick
7 leave wages because the base hourly rate, as opposed to the regular rate, was used, 4) failure to
8 reimburse business expenses, including no reimbursements for employee's required to purchase
9 uniforms and not eligible for reimbursement *unless* they worked at least 90 days, and 5) derivative
10 wage statement violations as a result of the above.

11 39. The \$618,980 MSA allocated to recovery for class claims represents a fair, adequate,
12 and reasonable resolution of those claims in light of the circumstances and balancing the risks against
13 the maximum and realistic recovery available.

14 **Rounding Damages**

15 40. Reviewing and analyzing the sampling that was provided revealed that 98.46% of the
16 employees sampled experienced a net detriment as a result of Allen's rounding system. Based on the
17 time records provided, with appropriate extrapolation, the rounding claim exposure was calculated to
18 be **\$89,006**. This is based on our expert's identification of unpaid hours within the sampling
19 extrapolated over the entire Class Period (June 16, 2016 May 4, 2021), it was determined Allen likely
20 underpaid for approximately 3,817 total hours (an average of more than 11 hours per class member).

21 41. Allen raised a number of defenses to the Class' rounding claim, including that the
22 admittedly uniform policy was "consistently applied" and that time that was rounded was not actually
23 compensable time worked. *Silva v. See's Candy Shops, Inc.* (2016) 7 Cal.App.5th 235, 241, 251-253.
24 Allen contends it's policy was facially neutral (which is indisputable) and that any time that was
25 rounded generally resulted from employees electing to clock in early and then not working until the
26 shift start.

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1 **Off-the-Clock Work**

2 42. Plaintiffs contend Allen failed to pay for all hours worked because they were expressly
3 advised not to clock in more than five (5) minutes before the shift start time, although they were
4 required to be on the premises and under the control of Allen prior to that time.

5 43. Assuming each class member worked 15 minutes off-the-clock *per shift* that was not
6 unpaid simply because of rounding, which is a substantial amount, the maximum value of unpaid time
7 was calculated to be **\$456,754.50**.

8 **Underpaid Sick Pay Damages**

9 44. Reviewing and analyzing the payroll data sampling for the Class, our retained expert
10 determined the data reflects only 13.8% of the class members redeemed paid sick leave during the
11 Class Period. Extrapolated over the entire Class, the maximum potential underpaid sick leave wages
12 was calculated to be **\$892**.

13 **Meal Period Damages**

14 45. At all relevant times, Allen had a facially valid meal period policy that accurately
15 advised employees of their rights to a 30 minute unpaid meal period for every five (5) hours worked.

16 **Exhibit 2.**

17 46. Allen also produced copies of a facially valid Meal Period waiver form through which
18 most class members waived their rights to meal periods on shifts less than six (6) hours and/or the
19 second meal period on shifts less than twelve (12) hours.

20 47. Using the records produced by Allen, our retained expert identified presumptively
21 denied meal periods as any shift of more than six (6) hours where the first meal period was either 1)
22 not recorded at all, 2) recorded five (5) minutes or more late, or 3) not at least 25 minutes long.
23 Presumptively denied second meal periods were identified on shifts over 12 hours where either 1) no
24 second meal period was recorded, 2) the second meal period was more than 5 minutes late, or 3) the
25 second meal period was more than 5 minutes short. Extrapolating the results/calculations gleaned
26 from the sampling over the entire Class Period, Plaintiff's expert determined there were 79,027 shifts
27 during the Class Period and that presumptive violations occurred during 6,542 (8.27%) of the meal

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1 period eligible shifts—5,386 of the presumptively denied meal periods were not compensated with a
2 meal period premium. This results in an anticipated **\$87,791.80** in unpaid “meal period premiums.”

3 **Rest Period Damages**

4 48. Allen’s written rest period policies are arguably unlawful. Specifically, there was no
5 written policy until 2019. The 2019 policy *does not* give effect to the “major fraction thereof”
6 requirement and, instead, advises only that one 15-minute rest period is provided for every four (4)
7 hours worked. See *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1030-1031; Exh. B. The
8 rest period policy also unlawfully purports to prohibit employees from leaving the premises during rest
9 periods. *Augustus v. ABM Sec. Svcs., Inc.* (2016) 2 Cal.5th 257, 269.

10 49. Although Allen’s written rest period policies are problematic, Plaintiff Rodriguez
11 advised he was frequently able to take duty-free rest periods despite the deficiencies. Assuming a
12 substantial 50% rest period violation rate, our expert calculated the maximum rest period premium
13 exposure at **\$640,423**.

14 **Wage Statement Statutory Penalties**

15 50. The Class Claims assert both derivative wage statement violations and a stand-alone
16 wage statement violation because the wage statements Allen issued identify multiple different
17 categories of “hours” (regular pay, doubletime, overtime, crisis prem OT, CA Sick, MEAL
18 PENALTY, etc.) and include *all* of those in the line item designated “total hours”. This results in the
19 total hours identified being inaccurate in violation of Labor Code section 226(a)(2).

20 51. Based on the number of wage statements within the sampling with either a derivative or
21 direct violation, our expert calculated the maximum 226(e) statutory penalty exposure at **\$385,681**. If
22 only stand-alone violations are considered, the exposure is reduced to \$243,588.

23 **Unreimbursed Business Expenses**

24 52. Plaintiffs contend Allen required them to purchase items such as steel-toed boots, and
25 other mandated safety/uniform equipment, but expressly advised those items would not be reimbursed
26 unless and until the employee was employed for at least 90 days. See **Exhibit 3**. After the Covid-19
27 pandemic began, Allen mandated Plaintiff Rodriguez wear a mask, but did not provide access to such.

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53. Reasonably assuming that each and every Class Member was denied \$100 in unreimbursed expenses, results in maximum exposure of **\$32,500**.

Maximum Former Employee Sub-Class Damages

54. Based on the sampling provided by Allen, and extrapolated to cover the entire Class, it is believed 190 members of the Class had their employment end between June 16, 2017 and May 4, 2021. This exposes Allen to statutory waiting time penalties pursuant to Labor Code section 203 of **\$743,280**.

55. The SA authorizes each Former Employee Sub-Class Member to receive \$250 in addition to any settlement share he/she may be entitled as a Class Member. SA ¶ 68. It is expected that \$47,500 (6.4% of the maximum statutory penalty exposure) will be distributed to Former Employee Sub-Class Members.

56. In total, the maximum damages the Class could recover is **\$2,438,328.30**. The Settlement allocates \$618,980 to resolve the claims of the Class (\$47,500 of which is expected to be set aside for Former Employee Sub-Class Members), which is 25.3% of the *maximum* exposure. Considering all of the risks, as outlined in more detail below, including the substantive challenges Defendant asserted to the claims and the inherent delay and uncertainty with further litigation, the recovery is fair, adequate, and reasonable.

57. Under the circumstances, and considering the legal and factual defenses asserted by Defendant, 100% success is unlikely.

Defendant's Defenses and Realistic Liability

58. Because 100% success in litigation is unrealistic, Class Counsel also determined a much more realistic estimate for the potential recovery of the Classes. Under this more measured approach, Class Counsel (1) applied a 10% discount to the rounding claim based upon the difficulty with demonstrating that time rounded was actually "compensable time", leaving \$80,105.40, (2) applied a 50% discount to the off-the-clock claim because of the individualized nature and potential difficulties in proving up the same, leaving \$228,377.25, (3) applied a 50% discount to the meal period claims because of the facially lawful policy, the existence of the meal period waiver form, and the general challenges to certification that often plague meal period claims, leaving \$44,895.90, (4)

1 applied a 50% discount to the rest period claims because Plaintiff both advised they were frequently
2 able to take some uninterrupted and off-duty rest periods, Plaintiff Rodriguez advised that although the
3 policy purported to preclude it, he was able to leave the premises for rest periods, and case law
4 suggesting that the mere fact a policy prohibits employees from leaving the premises during rest
5 periods does not itself establish employer control (i.e. on-duty) rest periods (*Castro v. PPG Industries,*
6 *Inc.* (C.D. Cal. 2021) 2021 WL 99724 *3; *Hubbs v. Big Lots Stores, Inc.* (C.D. Cal. 2018) 2018 WL
7 5624141 *4-5), leaving \$320,211.50, (5) applied no discount to the underpaid sick leave or the
8 unreimbursed business expenses, leaving \$33,392, (6) applied a 25% reduction to the stand-alone
9 wage statement claim value (because *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308
10 arguably precludes derivative wage statement penalties and Defendant's arguments that the non-
11 derivative violation did not cause any injury), leaving \$289,260.75 and (7) applied a 50% discount to
12 the claim for waiting time penalties asserted by the Former Employee Sub-Class in order to take into
13 account the substantive challenges available to the unpaid wage claims that would necessarily threaten
14 a derivative 203 claim and Allen's arguments against willfulness, leaving \$371,640.

15 59. Under this more measured approach, I determined the Class' total realistic recoverable
16 damages to be \$1,367,882.80; \$371,640 of which results from waiting time penalties alone.

17 60. The portion of the MSA allocated to Class claims, \$618,980 (\$658,980 - \$40,000
18 allocated to resolve PAGA Claims), represents a substantial 45.25% of this realistic recovery. The
19 Class is securing an expected gross recovery (\$571,480 after the expected allocation to the Former
20 Employee Sub-Class is deducted) approaching 60% (57.37%) of its non-waiting time penalty realistic
21 recovery and an expected net recovery (\$298,862, not including the amount attributable to resolution
22 of PAGA claims) of 30% of its realistic damages. The Former Employee Sub-Class is securing
23 recovery of 12.78% of its realistic waiting time penalty claim, *in addition to* the substantial recovery
24 on the non-waiting time penalty claims of the Class.

25 61. Overall, Allen raised a number of legitimate substantive arguments against the Class
26 Claims, which had the potential to substantially limit and potentially eviscerate the Class' recovery.
27 At the very least, the defenses would have resulted in substantial motion practice that would have
28 delayed any recovery on behalf of the Class substantially.

1 62. Defendant planned to argue that 1) its rounding policy was fair and neutral on its face,
2 did not consistently result in a failure to pay employees for time worked, and any allegedly underpaid
3 time was either *de minimis* or was actually not compensable.¹ *Silva v. See's Candy Shops, Inc.* (2016)
4 7 Cal.App.5th 235, 251-253

5 63. There is no reasonable argument to be made against the contention Defendant's
6 rounding policy is *facially* neutral—it undeniably is. It is Rodriguez's contention that because
7 Defendant prohibited employees from clocking in more than five (5) minutes before a shift start (see
8 Exhibit 4), but also expected them to be at the pre-shift safety meeting *and* to stretch before their
9 actual shift start time, it ensured the rounding policy never operated in the employees' favor. This
10 impact was borne out through review of the time records. However, even assuming the rounding was
11 detrimental to employees, as applied, the Class would still have to demonstrate that the detrimentally
12 rounded time was compensable; that is was either time spent working or time under the actual control
13 of Defendant. *Negrete v. ConAgra Foods, inc.* (C.D. Cal. 2019) 2019 WL 1960276 *6. Establishing
14 that their rounding policy was valid and/or that the uncompensated time was not "compensable" would
15 reduce Defendant's potential liability by more than nearly \$90,000.

16 64. Defendant strongly opposed any of-the-clock claims, contending its written policies
17 made it abundantly clear that *all* work time must be recorded and that falsification of time records or
18 fraudulent reporting of time worked was strictly prohibited. To the extent Plaintiffs and the Class
19 could demonstrate any off-the-clock work was performed, they faced the additional hurdle of
20 establishing Allen knew or should have known about it, particularly considering its policies.
21 Challenges to certifying off-the-clock claims are particularly acute by nature due to the often case-by
22 case manifestation of off-the-clock work. E.g. *Kilbourne v. Coca-Cola Co.* (S.D. Cal. 2015) 2015 WL
23 5117080 *8-9. Defendant could reduce its exposure by nearly \$500,000 if it were able to avoid either
24 class certification or ultimate liability on the off-the-clock claim.

25 65. Defendant further contended it properly calculated employees' regular rate of pay for
26 purposes of sick pay and that any items excluded from their regular rate calculations were properly

28 ¹ See *Alzono v. Maximus, Inc.* (C.D. 2011) 832 F. Supp. 2d 1122, 1126, *See's Candy Shops, Inc. v. Sup. Ct.* (2012) 210
Cal.App.4th 889, 907, and *Lindow v. United States* (9th Cir. 1984) 738 F.2d 1057, 1062-1063.

1 excluded as discretionary. Success on this front would have reduced Defendant's potential liability by
2 another almost \$1,000.

3 66. Defendant vehemently argued all of its employees were authorized and permitted to
4 take off-duty meal and rest periods. Securing and maintaining class certification under the
5 circumstances, particularly in the face of a valid written meal period policy and the case law trending
6 against certifying rest period claims solely based on an off-premises prohibition, would present a
7 substantial challenge, as would establishing the scope of liability. Even partial success in attacking the
8 meal and rest period claims would reduce Defendant's maximum \$730,214.80 liability substantially.

9 67. Defendant contended it acted in good faith and that its conduct was not willful such that
10 waiting time penalties would have been unavailable to the Class under California Labor Code section
11 203.² Defendant could reduce its liability by another almost \$750,000 if successful in this argument.

12 68. While I believe cases such as *Diaz v. Grill Concepts, Inc.*, 23 Cal.App.5th 859 (Cal.
13 2018) make it clear that the failure to "understand" an applicable law (i.e. ignorance of the law) will
14 not defeat willfulness in the context of a waiting time penalty claim, the argument is not frivolous and
15 could have some traction with a Court, particularly in light of the disparity between the actual
16 underpaid wages (\$) and the substantial value of the waiting time penalties (nearly \$3,000,000). It is
17 anticipated JM Eagle would raise an argument that the imposition of full waiting time penalties was
18 unconstitutionally excessive in the event the Class prevailed on that claim.

19 69. Defendant further argued that Plaintiff could not establish the "injury" or "knowing and
20 intentional" elements of their Labor Code section 226(a)(1), (2), (5), (8) and (9) claims where (i) the
21 alleged inaccuracies did not themselves cause any distinct injury and are frowned upon by some
22 courts³, (ii) Defendant had accurately listed the amounts actually paid to its non-exempt California
23 employees, and (iii) case law suggests that such does not create derivative wage statement violations⁴.

25 ² See e.g., *Gonzalez v. Downtown L.A. Motors, LP* (2013) 215 Cal. App. 4th 36, 54 (noting trial court's refusal to award
26 liquidated damages on a challenge to a piece-rate compensation system, finding the employer's actions were taken in
27 "good faith and with a reasonable basis for believing the actions were not in violation of the law."); and *Harris v. Vector*
28 *Marketing Corp.* (N.D. Cal. 2009) 656 F.Supp.2d 1128, 1145-46 ; *Nordstrom Com'n Cases* (2010) 186 Cal. App. 4th 576,
584 (holding trial court did not abuse its discretion in discounting penalties on a § 203 claim because the defendant could
avoid the penalties by showing that a 'good faith dispute' existed regarding the claimed wages).

³ See e.g., *Elliott*, 572 F.Supp.2d at 1179 (shortening the term "Workforce" to "Work" while otherwise stating the full
name of the employer); *York*, 2009 WL 8617536 at 7 (showing the registered dba "Starbucks Coffee Company" instead of

1 70. Absent the Settlement, it is also expected Defendant would rely upon the very recent
2 case of *General Atomics v. Sup. Ct.* (2021) 279 Cal.Rptr. 373 to attack Plaintiff’s 226(a)(2) claim on
3 the theory that an employee could simply add the total from the “regular pay” column and the total
4 from the “overtime” column to calculate the necessary total hours worked and thus the wage
5 statements do not violation section 226. While I do not believe *General Atomics* is relevant to the
6 factual circumstances of the stand-alone violation here, particularly because there is a number of “total
7 hours” identified that is necessarily inaccurate, if Defendant were successful its potential liability
8 would be reduced by \$385,681.

9 71. Finally, Defendant additionally attacked all derivative claims, including those for
10 inaccurate wage statements (under section 226(a)), waiting time penalties (under sections 201-203),
11 PAGA Penalties, and for restitution/injunctive relief under the UCL, as (a) dependent upon the
12 substantive claims (and thereby subject to the same attacks), (b) completely duplicative of damages
13 available under other theories, or (c) discretionary, and therefore not likely to be awarded by the
14 court.⁵

15 72. Considering all of the circumstances, and the inherent risks in further litigation that
16 would undoubtedly have included multi-pronged legal attacks on the Class Claims, and a necessarily
17 protracted litigation process of uncertain outcome, the Settlement, which is expected to provide an
18 average net recovery of \$919.57 (\$298,862/325 Class Members) to each Class Member and an
19 additional \$250 to each Former Employee Sub-Class Member, provides timely, guaranteed and
20 cognizable monetary relief that is objectively fair, adequate, and reasonable.

21 73. While I am confident that certification and success on the merits could have been
22 attained, continued litigation was guaranteed to be costly, time consuming, and uncertain in outcome.
23 Appellate proceedings would only further delay and jeopardize recovery by Class Members. Shifting
24 sentiment regarding wage statements claims add yet another layer of concern to continued litigation.

26
27 “Starbucks Corporation”); and *Hurst*, 2012 WL 1564733 at *17 (granting summary judgment to defendant on the
plaintiff’s Labor Code § 226 claim on the basis of the good faith dispute defense).

28 ⁴ See e.g., *Naranjo*, *supra*, 40 Cal.App.5th at 474; *Maldonado*, *supra*, 22 Cal.App.5th 1308.

⁵ See e.g., *General Atomics v. Sup. Ct.* (2021) 279 Cal.Rptr.3d 373; *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021)
999 F.3d 668.

1 By contrast, the proposed Settlement ensures timely relief and substantial recovery for the Class and is
2 superior to other recently approved settlements raising similar claims.

3 74. The Released Claims, defined in Paragraphs 42 and 73 of the Settlement, were
4 narrowly tailored to track the factual allegations underlying the claims advanced on behalf of each
5 respective Class and do not include a Civil Code section 1542 waiver.

6 **PAGA Penalty Exposure Calculations**

7 75. Defendant also faces a maximum of \$1,999,464 in civil penalty exposure for alleged
8 Labor Code violations (only 25% of which could have gone to the aggrieved employees).⁶ Plaintiffs
9 could not impose civil penalties for the alleged underpayment of sick pay wages as the HWHFA
10 expressly precludes such.

11 76. Because PAGA penalties are discretionary, often reduced significantly by courts, and
12 because imposition of penalties under Labor Code section 226.3 is debatable⁷, a steep discount of 90%
13 or more is appropriate, leaving \$199,946.40.

14 77. The Settlement allocates \$40,000 to resolution of claims for PAGA civil penalties
15 arising out of the alleged violations of the Labor Code committed against the Class. This equates to
16 2% of the maximum and 20% of the realistic PAGA exposure, which is an appropriate resolution
17 under the circumstances because the punitive and deterrent purposes of the PAGA are being served by
18 the substantial damages and statutory penalties being paid to the Class in resolution of substantive
19 Class Claims. *Jennings v. Open Door Marketing, LLC* (N.D. Cal. 2018) 2018 WL 4773057 *8-9
20 (approving PAGA recovery of 0.6% of maximum); *Ahmed v. Beverly Health & Rehabilitation Svcs.,*
21 *Inc.* (ED. Cal. 2018) 2018 WL 746393 *10.

22
23 ⁶ 75% of any civil penalties recovered shall be paid to the LWDA and 25% to the aggrieved employees. Section 2699(i).

24 ⁷ In a recently published opinion, the Third District Court of Appeal—in the only published California case to date to
25 examine the issue—held that Labor Code section 226.3 establishes the civil penalty for all violations of Labor Code section
26 226(a). *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (Cal. 2018) (“Section 226.3 provides the
27 civil penalty for failure to comply. In our view, LWDA would not be prohibited from seeking civil penalties for a grossly
28 inadequate wage statement simply because the employer did provide a statement. Otherwise, the purpose of the statute
would be thwarted.”). Labor Code section 226.3 provides a civil penalty of “two hundred fifty dollars (\$250) per employee
per violation. Under *Raines*, Defendant would owe \$1,094,464 (\$250 x 4,377 deficient wage statements). Prior to the
Raines decision, conventional wisdom held that the penalty for furnishing inaccurate wage statements in violation of Labor
Code section 226(a) was the default penalty under Labor Code section 2699(f) of \$100 per wage statement. If the \$100
penalty is used, Allen’s total PAGA exposure for failing to provide accurate itemized wage statements would plummet to
only \$437,700 (4,377 deficient wage statements x \$100).

1 78. It is expected there will be just over 200 (202) Settlement Class Members who are also
2 eligible to receive a proportional share of the \$10,000 to be distributed to aggrieved employees. Each
3 aggrieved employee is expected to receive an average of \$49.50.

4 79. This Settlement represents substantial and cognizable monetary recovery, particularly
5 considering the nature and inherent risks of further litigation.

6 80. I transmitted the Settlement Agreement to the LWDA on June 30, 2021 in compliance
7 with Labor Code § 2699(1)(2). See **Exhibit 5**.

8 **The Class Notice and Notice Plan Comply with Rule 23 and Satisfy Due Process**

9 81. Attached as **Exhibit A** to the Settlement Agreement is true and correct copy of the
10 proposed Notice of Class Action Settlement and Final Approval Hearing (the “Class Notice”) which
11 has been reviewed and approved by the Parties.

12 82. The Class Notice meets all of the requirements of procedural due process and Rule
13 23(e) by identifying the Plaintiff and Defendant and describing the claims and the Class Action in a
14 straightforward manner; succinctly describing the essential terms of the proposed Settlement,
15 including the Class Representative’s proposed Service Payment and the amount Class Counsel will
16 request for attorney’s fees and costs; identifying the claims that are being released by the Classes;
17 identifying all parties against whom claims are being released; providing Class Members with
18 information on how to participate in, exclude themselves from, or object to the Settlement; clearly
19 providing all applicable deadlines for such action; informing Class Members of the consequences if
20 they decide to exclude themselves from the Settlement; and advising them that, if they choose to
21 participate and the Settlement is approved, they will be bound by the resulting judgment, including
22 informing them that this may affect their ability to participate in other pending litigation. Further, the
23 Class Notice clearly explains the manner in which Class Members can obtain further information (e.g.,
24 through the Court’s website and the administrator’s website) and that the Final Approval Hearing may
25 be moved without further notice.

26 83. Because all Class Members are current or former employees of Defendant, for whom
27 Defendant has current or last known addresses as well as SSNs, notice here is simpler and more

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1 reliable than in other types of class actions that require published notice to reach unidentifiable class
2 members.

3 **Phoenix Class Action Administration Solutions Should be Approved as Claims Administrator**

4 84. My office solicited bids from several national settlement administrators, including
5 Atticus Administrators, LLC, Simpluris, Inc., Rust Consulting, and Phoenix Class Action
6 Administration Solutions. After negotiating in an effort to obtain the most reliable and cost-effective
7 service possible, the Parties have selected Phoenix Class Action Administration Solutions to serve as
8 Administrator.

9 85. I have experience with Phoenix and have found their fees fair and competitive amongst
10 other administrators in the industry. I believe Phoenix's bid of \$6,975, which was comparable to the
11 other bids received and actually less than the majority, is reasonable in relation to a class of this size,
12 the work to be performed, and as compared to estimates received from other administrators.

13 **Plaintiffs Have and Will Serve the Class Well**

14 86. Plaintiff Rodriguez and Plaintiff Ugale's interests in prosecuting this Class Action and
15 obtaining the most beneficial recovery possible fully comport with the collective best interests of the
16 Class Members. Plaintiffs understand the claims and theories that are being advanced, have been
17 involved through the litigation and have no conflicts with the other members of the Class they seeks
18 to represent. Plaintiffs were each subjected to the same unlawful policies, practices, and procedures,
19 having been 1) underpaid because of Defendant's rounding policies and practices, 2) required to work
20 off-the-clock without compensation, 3) denied meal and rest periods because of Defendant's policies
21 and scheduling, 4) underpaid wages because of Defendant's failures to properly calculate and pay
22 redeemed sick pay (because of the regular rate miscalculation), 5) furnished inaccurate itemized wage
23 statements, 6) not timely paid all wages due and owing upon separation, and 7) required to incur
24 necessary expenses (including mandated uniform/safety equipment) that were not reimbursed. Were
25 each not serving as Class Representatives, Plaintiffs would each be a Class Member.

26 87. Plaintiffs have and are prepared to continue adequately representing the interests of the
27 Class Members. Plaintiffs have demonstrated their commitment to prosecuting this Class Action on
28 behalf of the Class Members by, amongst other things, locating and retaining attorneys, participating

1 in discovery and investigation, filing their respective lawsuits and willingly exposing their names and
2 reputations to scrutiny from prospective and/or future employers, and helping to facilitate the
3 Settlement for which approval is now sought, including participating in and being available throughout
4 the entire mediation process.

5 88. Plaintiffs, who have worked diligently with Class Counsel throughout this entire
6 litigation, including taking numerous calls with Class Counsel, providing information regarding
7 potential witnesses in order to facilitate further investigation, participating in the Parties' formal and
8 informal information exchange, and participating in the mediation and settlement negotiations, should
9 be rewarded for taking the initiative to pursue these claims on behalf of their coworkers, and for their
10 role in reaching a substantial settlement providing for valuable monetary relief to the Class.

11 89. Plaintiffs will each apply for an Enhancement Payment in the amount \$7,500 (\$15,
12 collectively), or 1.13% of the \$658,980 MSA (2.27% total), in consideration for their service as Class
13 Representatives. I believe this to be fair, reasonable and appropriate.

14 90. Class Members will be apprised of Plaintiffs' requests as well as their ability to review
15 the moving papers on the Court's website, and to object to the request if they so desire.

16 **Experience of Class Counsel**

17 91. In May, 2004, I received a B.A. from California State University, Sacramento. In May
18 2007, I received a J.D. with distinction from the University of the Pacific, McGeorge School of Law.
19 In November, 2007, I became a member of the State Bar of California. I have been an attorney with
20 Mayall Hurley P.C. since 2013. I became a Shareholder in March 2019 and have been serving on the
21 management team as the Director of Human Resources since July 2020. Prior to joining Mayall
22 Hurley, I spent two (2) years as a Deputy District Attorney, and an additional three (3) years as a
23 litigation associate for the Sacramento law firm of Downey Brand, LLP. I have been focusing my
24 practice almost exclusively on employment litigation, representing both employees and employers, for
25 the past eight (8) years.

26 92. My law firm, Mayall Hurley P.C., primarily through attorneys Robert J. Wasserman
27 and me, has pursued this action aggressively, and many other similar class, collective, and
28 representative actions. For instance, Mayall Hurley P.C. has recently been approved as class counsel

1 in *Flores v. Dart Container Corp., et al*, Eastern District of California Case No. 2:19-cv-00083-WBS-
2 EFB; *Rodriguez v. J-M Manufacturing, Inc.*, San Joaquin County Superior Court Case No. STK-CV-
3 UOE-2019-6065; *Arata v. Cozad Trailer Sales, LLC*, San Joaquin County Superior Court Case No.
4 STK-CV-UOE-2020-1774; *Modica v. Iron Mountain Information Management Svcs., Inc.*, United
5 States District Court, Eastern District of California Case No. 2:19-cv-00370-TLN-JDP; *Magee v.*
6 *Thyssenkrupp Materials, N.A., et al.*, Alameda County Superior Court Case No. RG19027231;
7 *Basinger v. Il Palio Restaurant Group, Inc.*, San Diego County Superior Court Case No. 37-2018-
8 00004296-CU-OE-CTL; *Pacheco v. Bushfire Grill, Inc., et al*, United States District Court, Southern
9 District of California, Case No. 3:18-cv-01696-JAH-WVG; *Wise v. ULTA Salon, Cosmetics &*
10 *Fragrance, Inc.*, United States District Court, Eastern District of California, Case No. 1:17-cv-00853-
11 DAD-EPG; *Fernando and Kalaveras v. Burroughs, Inc.*, Alameda County Superior Court, Case No.
12 RG18906875; *Mansur v. Owens-Brockway Glass Container, Inc.*, San Joaquin County Superior Court,
13 Case No. STK-CV-UOW-2018-14631; *Alderson v. Alameda County Agricultural Fair Association*,
14 Alameda County Superior Court, Case No. RG18912654; *Terry v. Mare Island Dry Dock, LLC*,
15 Solano County Superior Court, Case No. FCS051650; *Mettler, Bender, and Rojas v. Les Schwab Tire*
16 *Centers of California, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476;
17 *Escalera v. La Tapatia Mexican Market, Inc.*, San Joaquin County Superior Court, Case No., ST-CV-
18 UOE-2017-5296; *Garcia, et al. v. HMS Host USA, Inc.*, United States District Court, Northern District
19 of California, Case No. 17-cv-03069-RS; *Ali v. Sutter Valley Medical Foundation, Inc.*, Sacramento
20 County Superior Court, Case No. 34-2017-00217486; *Grady, et al. v. People 2.0 dba The Hire Source*,
21 *et al.*, San Joaquin County Case No. STK-CV-UOE-2017-13867; *Kumar v. Forty Niners Stadium*
22 *Management Company*, Santa Clara County Superior Court, Case No. 17CV3121427; *Gast v. Flooring*
23 *Liquidators, Inc.*, Stanislaus County Superior Court, Case No. 2026223; *Russell v. KeHe Distributors*,
24 *Inc.*, United States District Court, Eastern District of California, Case No. 2:17-at-00592; *Smith v.*
25 *Wal-Mart Stores, Inc. et al.*, United States District Court, Northern District of California, Case No.
26 3:16-cv-02832-JD; *Titus v. The Martin-Brower, LLC*, United States District Court, Eastern District of
27 California, Case No. 2:17-cv-00558-JAM-GGH; *Hugues v. The Morning Star Trucking Company*,
28 *LLC, et al.*, Yolo County Superior Court Case No. CV16-1215; *Ahmed v. Beverly Health and*

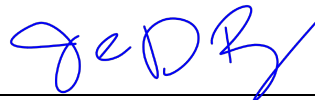
1 *Rehabilitation Services, Inc., et al.*, United States District Court, Eastern District of California, Case
2 No. 2:16-cv-01747-WBS-KJN; *Guzman-Padilla, et al. v. Gerard Van De Pol, et al.*, United States
3 District Court, Eastern District of California, Case No. 2:17-cv-00196-JAM-KJN; *Jaime v. Walt*
4 *Disney Parks and Resorts U.S., Inc.*, United States District Court, Central District of California, Case
5 No. SACV 15-01618-CJC(DFMx); *Stevens v. Suncrest Solar, Inc.*, Fresno County Superior Court,
6 Case No. 16CECG03355; *Cardoza v. Blazona Concrete Construction, Inc.*, Alameda County Superior
7 Court Case No. RG17866256; *Maasrani v. Waterton Hospitality Management*, San Mateo County
8 Superior Court, Case No. 17CIV05470; *Huynh v. Parker-Hannifin Corporation*, Stanislaus County
9 Superior Court, Case No. 2022325; *Moser v. O'Connor Woods Housing Corporation*, San Joaquin
10 County Superior Court, Case No. STK-CV-UOE-2014-0009861; *Bastami v. Semiconductor*
11 *Components Industries, LLC*, Santa Clara County Superior Court, Case No. 16cv297447; *Davis v.*
12 *Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior Court, Case No. BC592580; *Van*
13 *Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District Court, Eastern District of
14 California, Case No. 1-16-cv-00066-SKO; *Clark v. Arrow Sign Co.*, San Joaquin County Superior
15 Court, Case No. STK-CV-UOE-2016-6457, *Moreno v. B.R. Funsten & Co.*, Solano County Superior
16 Court Case No. FCS046149, *Taylor v. Meadowbrook Meat Company, Inc.*, United States District
17 Court, Norther District of California, Case No. 3:15-cv-00132-LB, and *Perez et al. v. Abbate Family*
18 *Farms Limited Partnership et al.*, San Joaquin County Superior Court, Case No. 39-2012-00288653-
19 CU-OE-STK, all wage-and-hour class actions with claims similar to the instant matter. Not including
20 this matter, we have several other wage-and-hour class actions currently pending final approval in
21 which we have been preliminarily approved as class counsel. My law firm and I have also represented
22 plaintiffs in numerous representative employment actions, settlements in which have been approved by
23 multiple California and federal courts, and are currently prosecuting dozens more.

24 93. Mayall Hurley, P.C. has also obtained class and/or conditional certification in a number
25 of cases, including *Liu v. QNAP, Inc.*, Los Angeles County Superior Court Case No. 19PSCV00668;
26 *Bice v. Vensure HR, Inc., et al.*, San Joaquin County Superior Court, Case No. STK-CU-UOE-2016-
27 1264; *Perez et al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin County Superior
28 Court, Case No. 39-2012-00288653-CU-OE-STK, *Wilk v. Skechers U.S.A., Inc.*, United States District

1 court, Central District of California, Case No. 5-18-CV-01921-JGB-SP; *Titus v. Paramount Equity*
2 *Mortgage, LLC*, United States District Court, Eastern District of California, Case No. 2:17-cv-00349-
3 MCE-KJN; and *Solati v. RPM Mortgage, LLC*, Solano County Superior Court Case No. FCS048401.

4 94. I am also currently lead counsel or co-lead counsel in at approximately thirteen (13)
5 employment class action cases and a handful of PAGA representative cases.

6 I declare under penalty of perjury under the laws of the State of California and the United
7 States of America that the foregoing is true and correct. Executed on this 3rd day of August, 2021, in
8 Lodi, California.

9
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11 _____
JENNY D. BAYSINGER

EXHIBIT 1

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN

JOBANY RODRIGUEZ and JANET
UGALE, individually and on behalf of all
others similarly situated and as proxy for
the LWDA

Plaintiffs,

v.

ALLEN DISTRIBUTION, L.P., and DOES
1-100, inclusive,

Defendant.

Case No. STK-CV-UOE-2020-0005807

JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT
AND RELEASE

1 6. On September 25, 2020, Plaintiff Ugale filed a Motion to Remand the *Ugale* Matter
2 back to the Superior Court of California, County of San Joaquin. That motion has been fully briefed, but
3 the Court has not yet made any ruling. On February 18, 2021, Plaintiff *Ugale* and Defendant agreed to
4 stay proceedings in the *Ugale* Matter pending private mediation.

5 7. As part of the Settlement, and subject to the approval of District Judge Kimberly
6 Mueller, the Parties will stipulate to 1) granting of the pending Motion to Remand in the *Ugale* Matter,
7 2) the filing of a First Amended Complaint in the *Ugale* Matter in the Superior Court of California,
8 County of San Joaquin to add Rodriguez as a Plaintiff and to incorporate the allegations of the *Rodriguez*
9 Matter (including all claims asserted in the operative *Rodriguez* Complaint and those alleged claims /
10 violations asserted in Rodriguez's June 11, 2020 letter to the LWDA) into the *Ugale* Matter, and 3) a
11 further stay of the *Rodriguez* Matter until final approval in the amended *Ugale* Matter has been granted
12 by the San Joaquin County Superior Court. In the event Judge Mueller does not enter an order
13 remanding the *Ugale* Matter, then the Parties shall seek approval of this Settlement in the United States
14 District Court, Eastern District of California through the *Rodriguez* Matter, which the Parties agree may
15 be amended to 1) add Ugale as a named Plaintiff, 2) incorporate all allegations already pled in the *Ugale*
16 Matter, and (3) add those alleged claims / violations asserted in Rodriguez's June 11, 2020 letter to the
17 LWDA that are not in Rodriguez's First Amended Complaint.

18 b. The Parties Have Engaged In Extensive Information Exchange

19 8. Between September 2020 and March 4, 2021, as part of the Parties' formal and informal
20 discovery and settlement negotiations, Defendant provided Class Counsel with thousands of pages of
21 documents and line items of data. Specifically, Defendant produced all of the time records and payroll
22 records relating to Plaintiffs, relevant policy documents, and data regarding reimbursements. Defendant
23 also produced a sampling of time and payroll data for 62 randomly selected current and former potential
24 Class Members, and for Plaintiffs Ugale and Rodriguez, which amounted to more than 30,000-line items
25 of data, each with multiple individual data points. The sampling amounted to more than 20% of the
26 putative Class. Counsel for the Parties have further investigated the applicable law as applied to the facts
27 discovered regarding Plaintiffs' claims, the defenses thereto, and the damages and penalties potentially
28 available to Plaintiffs in the Action. In conjunction with those same negotiations, the Parties have

1 spoken at length about the strengths and weaknesses of each side's claims and defenses, the certifiability
2 of the class, and the scope of Defendant's potential liability. The Parties retained their own experts to
3 examine the data and determine the extent of the Class's potential damages.

4 c. The Parties Successful Settlement Efforts

5 9. On March 4, 2021, the Parties participated in good faith in arm's length settlement
6 discussions at a remote mediation with experienced employment class action mediator Marc Feder, Esq.
7 At the close of the mediation, with the help of a mediator's proposal, the Parties agreed to a settlement in
8 principle and executed a Memorandum of Understanding confirming same.

9 10. The Parties subsequently converted the MOU into this long-form Settlement
10 Agreement. The Parties believe and agree that this Settlement is a fair, adequate, and reasonable
11 resolution of the Action and have arrived at this Settlement in arms-length negotiations, taking into
12 account all relevant factors, present and potential, each side recognizing the risks of an adverse result.

13 11. As a result of the Action and efforts of Plaintiffs and Class Counsel, and although
14 Defendant contends it always acted lawfully with respect to Class Members, Defendant reviewed and
15 audited certain policies, practices and procedures to ensure compliance with California law.

16 12. For purposes of this Settlement only, Plaintiffs contend and Defendant does not dispute
17 that there is sufficient evidence to support the requisites for certification of the Class for settlement
18 purposes, specifically:

- 19 a. There are approximately 325 Class Members, which is so numerous as to make
20 it impractical to join all Class Members;
- 21 b. The Class is ascertainable from Defendant's records;
- 22 c. Common questions of law and fact exist;
- 23 d. The claims of the Plaintiffs are typical of the claims of the Class Members and
24 Plaintiffs are adequate representatives and should be appointed as such;
- 25 e. Mayall Hurley, P.C. and Justice Law Corporation are adequate to represent the
26 Class and should be appointed as Class Counsel;
- 27
28

1 f. The prosecution of separate actions by individual members of the Class would
2 create the risk of inconsistent or varying adjudications, which could establish
3 incompatible standards of conduct; and

4 g. Questions of law and fact common to the members of the Class predominate
5 over questions affecting individual members of the Class and a class action is superior to
6 other available means for the fair and efficient adjudication of the controversy.

7 d. Defendant's Denials

8 By entering into this Settlement, Defendant denies and continues to deny: (a) all of the
9 allegations made by Plaintiffs or the Class in the Action; (b) that it violated any applicable laws; (c) that it
10 is liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the
11 alleged facts or laws asserted in the Action; and (d) that class certification or representative treatment of
12 the Action or any alleged claim, for any purpose other than settlement, is proper. Defendant emphasizes
13 that the Court has not made any findings of liability as to Defendant and no court has determined that
14 class certification is warranted. Nonetheless, without admitting or conceding any liability or wrongdoing
15 whatsoever and without admitting or conceding that class certification or representative treatment is
16 appropriate for any purpose other than settlement purposes alone, Defendant has agreed to settle the
17 Action on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and
18 uncertainty of continuing the Action. The Parties specifically agree that the agreement of Defendant to
19 settle this matter is not, and shall not be construed as, an admission of any wrongdoing whatsoever. Any
20 stipulations or statements by Defendant contained in this Agreement are made for settlement purposes
21 only.

22 **DEFINITIONS**

23 The following definitions are applicable to this Settlement Agreement. Definitions contained
24 elsewhere in this Settlement Agreement will also be effective:

25 13. "Action" shall refer collectively to the *Rodriguez* Matter and the *Ugale* Matter. As part
26 of the Settlement, and as outlined herein, the Parties will stipulate to the granting of the pending Motion
27 for Remand in the *Ugale* Matter and to filing of an amended complaint in the *Ugale* Matter in the San
28 Joaquin County Superior Court to add Rodriguez as a named Plaintiff and Class Representative and to

1 combine all of the claims presently pending in the *Rodriguez* Matter into the *Ugale* Matter, including all
2 claims asserted in the operative *Rodriguez* Complaint and those alleged claims / violations asserted in
3 Rodriguez's June 11, 2020 letter to the LWDA.

4 14. "Attorneys' Fees and Costs" means attorneys' fees approved by the Court for Class
5 Counsel's litigation and resolution of the Action, and all Court approved costs incurred and to be
6 incurred by Class Counsel in the Action, including but not limited to, costs associated with documenting
7 the Settlement, providing any notices to governmental agencies required as part of the Settlement or
8 Court Order, securing the Court's approval of the Settlement, administering the Settlement, obtaining
9 entry of a Judgment, and expenses for any experts. Class Counsel will request attorneys' fees not in
10 excess of thirty-five percent (35%) of the Maximum Settlement Amount, or Two Hundred Thirty
11 Thousand Six Hundred Forty-Three Dollars (\$230,643.00). Class Counsel will request costs not in
12 excess of Twenty Thousand Dollars (\$20,000), to be deducted from the Maximum Settlement Amount.

13 15. "Class Counsel" means Mayall Hurley P.C. and Justice Law Corporation.

14 16. "Class List" means a complete list of all Class Members that Defendant will diligently
15 and in good faith compile from their records and provide to the Settlement Administrator within ten (10)
16 calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in
17 Microsoft Office Excel and will include each Class Member's full name; most recent mailing address;
18 Social Security number; dates of employment in class positions (i.e. as direct employees of Defendant);
19 the respective number of Workweeks that each Class Member worked during the Class Period in class
20 positions; and any other relevant information needed to calculate settlement payments.

21 17. "Class Member(s)" or "Settlement Class" means all current and former non-exempt
22 employees employed directly by Defendant at any time between June 16, 2016 and May 4, 2021.

23 18. "Class Period" means the period from June 16, 2016 through May 4, 2021

24 19. "Class/PAGA Representative Enhancement Payment" means the amount to be paid to
25 Plaintiffs in the Action in recognition of their effort and work in prosecuting the Action on behalf of
26 Class Members, and for their general releases of claims. Subject to the Court granting final approval of
27 this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiffs will request
28 Court approval of Class/PAGA Representative Enhancement Payments of Seven Thousand Five

1 Hundred Dollars (\$7,500) each, or Fifteen Dollars (\$15,000) total.

2 20. "Court" collectively refers to the California Superior Court for the County of San
3 Joaquin and the United States District Court for the Eastern District of California

4 21. "Defendant" means Allen Distribution, L.P.

5 22. "Effective Date" as defined below is a condition of performance of the obligations under
6 this Settlement. The Effective Date is determined as follows: If no Class Member or any person
7 claiming to have standing submits an objection or otherwise purports to object to the Settlement
8 Agreement, then the Effective Date is the date of the Court's entry of a final approval order and
9 judgment finally approving the Settlement Agreement ("Order of Final Approval"). If any Class
10 Member or any person claiming to have standing submits an objection or otherwise purports to object to
11 the Settlement Agreement, then the Effective Date is the date after (a) the Court's entry of an Order of
12 Final Approval, *and* (b) the first to occur of the following: (1) the date for seeking appellate review of
13 the Court's Order of Final Approval has passed without a timely appeal or request for review having
14 been made (i.e., 60 days after entry of the trial court's Order of Final Approval and Judgment); or (2) if
15 an appeal, review, or writ is sought from the Order of Final Approval, the day after the Order of Final
16 Approval is affirmed or the appeal, review or writ is dismissed or denied, and the Order of Final
17 Approval is no longer subject to further judicial review.

18 23. "Employer Taxes" shall mean and refer to Defendant's share of federal, state and/or
19 local payroll taxes that is owed on the portion of any Participating Class Member's Settlement Share that
20 constitutes wages. The Employer-side Taxes shall be separately paid by Defendant and shall not be paid
21 from the Maximum Settlement Amount or Net Settlement Amount.

22 24. "First Amended Complaint" means the proposed First Amended Complaint to be filed
23 in the *Ugale* Matter that is attached hereto as **Exhibit B**, which (a) adds Jobany Rodriguez as a named
24 plaintiff, (b) incorporates the factual allegations in the *Rodriguez* Matter, and (c) adds a cause of action
25 under PAGA pursuant to Labor Code Section 2698, *et seq.* asserting all claims in the *Rodriguez* matter
26 and in Rodriguez's June 11, 2020 letter to the LWDA.

27 25. "Former Employee Sub-Class Member" means all Class Members whose employment
28 with Defendant ended between June 16, 2017 and May 4, 2021.

1 26. “Individual Settlement Payment” means each Participating Class Member’s respective
2 share of the Net Settlement Amount.

3 27. “Labor and Workforce Development Agency Payment” means the amount that the
4 Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection
5 with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”)
6 out of the PAGA Settlement Amount. The Parties have agreed that Forty Thousand Dollars (\$40,000) of
7 the Maximum Settlement Amount will constitute the PAGA Settlement Amount and be remitted in
8 consideration for the resolution of Class Members’ claims arising under PAGA during the PAGA
9 Settlement Period. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Settlement Amount,
10 or \$30,000.00, will constitute the Labor and Workforce Development Agency Payment and Twenty-
11 Five Percent (25%) of the PAGA Settlement Amount, or \$10,000, will constitute the Net PAGA
12 Settlement Amount to be paid to Class Members.

13 28. “Maximum Settlement Amount” means the agreed amount of Six Hundred Fifty Eight
14 Thousand Nine Hundred Eighty Dollars (\$658,980) to be paid by Defendant in full satisfaction of all
15 Released Claims arising from the Action, which includes all Individual Settlement Payments to
16 Participating Class Members, Attorneys’ Fees and Costs to Class Counsel, the Class/PAGA
17 Representative Enhancement Payment to Plaintiffs, the Labor and Workforce Development Agency
18 Payment, and Settlement Administration Costs to the Settlement Administrator. This Maximum
19 Settlement Amount has been agreed to by Plaintiffs and Defendant based on the aggregation of the
20 agreed-upon settlement value of individual claims in the Action. In no event, other than as expressly
21 outlined in paragraph 51 herein, will Defendant be liable for more than the Maximum Settlement
22 Amount. There will be no reversion of the Maximum Settlement Amount to Defendant. Defendant will
23 be separately responsible for any employer payroll taxes required by law, which shall not be paid from
24 the Maximum Settlement Amount.

25 29. “Net Settlement Amount” means the portion of the Maximum Settlement Amount
26 remaining after deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement
27 Payments, the Labor and Workforce Development Agency Payment, and Settlement Administration
28 Costs. The Net Settlement Amount will be distributed to Participating Class Members.

1 30. “Net Class Settlement Amount” means the portion of the Maximum Settlement Amount
2 remaining after deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement
3 Payments, Settlement Administration Costs, and the PAGA Settlement Amount. The Net Class
4 Settlement Amount will be distributed to Participating Class Members. There will be no reversion of the
5 Net Class Settlement Amount to Defendants if any funds cannot be distributed.

6 31. “Net PAGA Settlement Amount” refers to the 25% portion of the PAGA Settlement
7 Amount available for distribution to Class Members regardless of whether they opt-out of receiving the
8 Net Class Settlement Amount. There will be no reversion of the Net PAGA Settlement Amount to
9 Defendants if any funds cannot be distributed.

10 32. “Notice of Objection” means a Class Member’s valid and timely written objection to the
11 Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector’s full
12 name, signature, address, and telephone number, (b) a written statement of all grounds for the objection
13 accompanied by any legal support for such objection; and (c) copies of any papers, briefs, or other
14 documents upon which the objection is based, if any documents are a basis of the objection.

15 33. “Notice Packet” or “Class Notice” means the Notice of Class Action Settlement,
16 substantially in the form attached as **Exhibit A**.

17 34. “PAGA Claims” shall refer to claims for the imposition of civil penalties pursuant to the
18 PAGA arising out of alleged violations of the California Labor Code and/or wage orders as outlined in
19 Rodriguez’s June 11, 2020 letter to the LWDA and the Released Claims alleged to have been committed
20 against Class Members during the PAGA Settlement Period.

21 35. “PAGA Settlement Amount” shall refer to the amount the Parties have agreed to
22 allocate to the resolution of PAGA Claims during the PAGA Settlement Period. The Parties have agreed
23 that Forty Thousand Dollars (\$40,000) of the Maximum Settlement Amount will constitute the PAGA
24 Settlement Amount.

25 36. “PAGA Settlement Period” is the period of time from June 11, 2019 through May 4,
26 2021.

27 37. “Parties” means Plaintiffs and Defendant collectively.

28 38. “Participating Class Members” means all Class Members who do not submit timely and

valid Request for Exclusion and are thus entitled to a share of the Net Class Settlement Amount.

39. “Pay Periods” means each full or partial Pay Period each Class Member worked for Defendant during the PAGA Settlement Period.

40. “Plaintiffs” mean Jobany Rodriguez and Janet Ugale.

41. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement Agreement.

42. “Released Claims” means all claims that were or could have been raised based on the factual allegations made in the Action. This includes but is not limited to: (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment under the California Labor Code, the FLSA or common law; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to pay sick pay; (f) failure to pay final wages due at separation; (g) failure to reimburse or indemnify all necessary business expenses; (h) claims brought under Business & Professions Code section 17200, *et seq.*, including, but not limited to all claims for unfair, unlawful and harmful conduct to class members, the general public, and Defendants' competitors and claims of unlawfully gaining an unfair advantage over other businesses; (i) claims under PAGA for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the Action, including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 245.5-249, 510, 512, 558, 1174, 1174.5, 1182.12, *et seq.*, 1194, 1194.2, 1197, 1198, 2800, 2802 and any applicable Wage Order; (j) claims of any nature, related to or arising out of or related to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 245.5-249, 510, 512, 558, 1174, 1174.5, 1182.12, *et seq.*, 1194, 1194.2, 1197, 1198, 2800, 2802 and any applicable Wage Order; (k) penalties of any nature; (l) interest; and (m) attorneys' fees and costs that occurred at any time during the Class Period.

43. “Released PAGA Claims” means all claims under PAGA for civil penalties that were or could have been raised based on the factual allegations made in the Action, including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 245.5-249, 510, 512, 558, 1174, 1174.5, 1182.12, *et seq.*, 1194, 1194.2, 1197, 1198, 2800, 2802 and any applicable Wage Order.

1 44. “Released Parties” means”: (a) Defendant Allen Distribution, L.P.; (b) each of
2 Defendant’s respective past, present and future parents, subsidiaries, and affiliates including, without
3 limitation, any corporation, limited liability company, partnership, trust, foundation, and non-profit entity
4 which controls, is controlled by, or is under common control with Defendant; (c) the past, present and
5 future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners,
6 managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans,
7 transferees, predecessors, successors, and assigns of any of the foregoing; and (d) any individual or entity
8 which could be jointly liable with any of the foregoing.

9 45. “Release Period” means June 16, 2016 through May 4, 2021.

10 46. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
11 request to be excluded from the non-PAGA portion of the Settlement. The Request for Exclusion must:
12 (a) set forth the name, address, telephone number and last four digits of the Social Security Number of
13 the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be returned to the
14 Settlement Administrator; (d) clearly state that the Class Member does not wish to be included in the
15 Settlement; and (e) be postmarked on or before the Response Deadline.

16 47. “Response Deadline” means the deadline by which Class Members must postmark
17 Requests for Exclusion, Notices of Objection or workweek disputes. The Response Deadline will be
18 forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement
19 Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or State holiday, in which case
20 the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. For
21 any re-mailed Notice Packets, the Response Deadline will be the later of forty-five (45) calendar days
22 after the initial mailing or fifteen (15) calendar days after re-mailing.

23 48. “Settlement Administration Costs” means the costs payable from the Maximum
24 Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not
25 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing
26 the Maximum Settlement Amount, and providing necessary reports and declarations, as requested by the
27 Parties. The Settlement Administration Costs will be paid from the Maximum Settlement Amount.

28 49. “Settlement Administrator” or “Administrator” means the third-party class action

1 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
2 administering this Settlement. The Parties each represent that they do not have any financial interest in
3 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
4 could create a conflict of interest.

5 50. "Workweeks" means each full or partial week that each Class Member during the Class
6 Period worked for Defendant.. All Class Members will be credited with at least one Workweek.

7 **TERMS OF AGREEMENT**

8 51. Maximum Settlement Amount; Non-Reversionary.

9 The Parties agree to settle this Class Action for the Maximum Settlement Amount of Six Hundred Fifty-
10 Eight Thousand Nine Hundred Eighty Dollars (\$658,980). The settlement is being made on an all-in,
11 non-reversionary basis, such that Defendant will pay the entirety of the agreed-upon Maximum
12 Settlement Amount. Subject to the terms and conditions of this Agreement, the Maximum Settlement
13 Amount is paid by Defendant in full and final settlement of (a) the Released Claims, (b) the costs of the
14 Settlement Administrator, (b) the payment to the LWDA, (c) the Enhancement Awards to Plaintiffs, (d)
15 Employee-side Taxes and Withholdings, and (e) Class Counsel's Fees and Costs. The Maximum
16 Settlement Amount shall be deposited into the QSF within ten (10) calendar days of the Effective Date.
17 The Maximum Settlement Amount does not include the Employer Taxes, which also must be paid by
18 Defendant.

19 52. Allocation of the Maximum Settlement Amount.

20 Subject to Court approval, the Maximum Settlement Amount of \$658,980.00 will be allocated
21 as follows:

- 22 (i) \$10,000.00 for the fees and costs of the Settlement Administrator;
- 23 (ii) \$30,000.00 for payment to LWDA under the PAGA;
- 24 (iii) \$15,000.00 for Class Representative Enhancement Payments to Plaintiffs
25 (\$7,500 each) (and for CC 1542 release);
- 26 (iv) \$20,000.00 for payment to Class Counsel for reasonable costs; and
- 27 (v) \$230,643.00 for payment to Class Counsel for attorneys' fees (35% of the
28 MSA).

1 The remainder constitutes the Net Settlement Amount, which is expected to be \$353,337.

2 53. Escalator Clause.

3 The Parties agree that there are approximately 325 Class Members and 17,370 Workweeks
4 during the Class Period. If either of these numbers increase by 10% or more, there shall be a
5 proportional increase in the Maximum Settlement Amount after a 10% grace period (i.e., if the number
6 of class members increases by 11%, the Maximum Settlement Amount Shall increase by 1%, etc.).

7 54. Reasonable Fees and Costs of the Settlement Administrator.

8 All of the Settlement Administrator's costs, which are not to exceed \$10,000 unless otherwise
9 approved by the Court, will be paid out of the Maximum Settlement Amount from the QSF. If there are
10 any unused amounts of the allocated Settlement Administrator costs after the settlement distribution,
11 such amount shall be distributed to the *cy pres* beneficiary.

12 55. Payment to the LWDA under the PAGA.

13 The Settlement allocates \$40,000 to the PAGA claims. Defendant does not oppose the
14 allocation. Of that amount, 75% – or \$30,000 – will be paid to the LWDA, and 25% – or \$10,000 – will
15 be designated as the Net PAGA Settlement Amount and will be distributed to the Class Members
16 employed during the PAGA Settlement Period, in accordance with paragraph 67. The Settlement
17 Administrator shall make the payment to the LWDA within ten (10) calendar days after Defendant funds
18 the QSF.

19 i. Court's Modification of PAGA Settlement Amount. The Court's
20 reduction or increase of the PAGA Settlement Amount is not a material term of the settlement or
21 this agreement. The Court's increase or reduction of the PAGA Settlement Amount shall not give
22 any party any basis to abrogate the Settlement or this Agreement. However, the Court's approval
23 of a PAGA Settlement Amount is a material term of the Settlement or this Agreement. If the Court
24 does not approve the PAGA Settlement Amount set forth in this Agreement, then the PAGA
25 Settlement Amount shall be made in the amount required by the Court. If the Court requires the
26 PAGA Settlement Amount to be higher than as stated in this Agreement, the additional funds for
27 the PAGA Settlement Amount shall be taken from the Net Settlement Amount. Thus, the Gross
28 Settlement Amount shall not be increased if the Court requires a larger PAGA Payment.

1 56. Class Representative Enhancement Payments to Plaintiffs.

2 Subject to Court approval, Plaintiffs will apply for Enhancement Payments not to exceed \$7,500
3 each, or 1.13% of the Maximum Settlement Amount each, in consideration for their efforts on behalf of
4 the Class including, but not limited to, assisting in the investigation of the claims and consulting with
5 Class Counsel, providing critical information and documents to Class Counsel, participating in
6 discovery, being available during the remote mediation, and participating in post-mediation settlement
7 negotiations. Any Enhancement Payments approved by the Court will be paid out of the Maximum
8 Settlement Amount and shall be in addition to each Plaintiffs' Individual Settlement Share under the
9 terms of the Settlement. In addition to the claims released under the Settlement, and as set forth in
10 greater detail below, Plaintiffs will also provide a general release which includes California Civil Code
11 section 1542 waiver. The Settlement Administrator will issue an IRS Form 1099 for any Enhancement
12 Award approved by the Court. The Settlement Administrator shall mail the Enhancement Payments to
13 Plaintiffs within ten (10) calendar days after Defendant funds the QSF. Defendant does not oppose the
14 proposed Enhancement Awards.

15 57. Reasonable Attorneys' Fees and Costs to Class Counsel.

16 Subject to Court approval, Class Counsel will apply to the Court for an award of attorneys' fees
17 and costs incurred in connection with the prosecution of this matter; all of the work remaining to be
18 performed including, but not limited to, preparing all of the motions and documents necessary to secure
19 Court approval of the Settlement Agreement (including all related appellate work); carrying out their
20 duties to see that the Settlement Agreement is fairly administered and implemented; responding to
21 questions from Class Members; and obtaining dismissal of the Class Action.

22 Class Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed
23 \$230,643, or thirty-five percent (35%) of the Maximum Settlement Amount, and declared costs of up to
24 \$20,000.00. Defendant does not oppose Class Counsel's request of equal to or less than this amount.
25 The fees and costs awarded to Class Counsel by the Court shall be paid out of the Maximum Settlement
26 Amount from the QSF. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel in
27 connection with this payment. The Settlement Administrator shall distribute the attorneys' fees and costs
28 awarded to Class Counsel within 10 days after Defendant funds the QSF.

1 Class Counsel will file a motion for attorneys' fees, costs, and Enhancement Awards with the
2 Court. In the event that a lesser sum is awarded for the attorneys' fees and costs referenced above, or for
3 the Enhancement Awards referenced in Paragraph 54, the approval by the Court of any such lesser
4 sum(s) shall not be grounds for Plaintiffs and/or Class Counsel to terminate the Settlement, but such an
5 order shall be appealable by them. In the event that such an appeal is filed, administration of the portion
6 of the attorneys' fees and/or costs award and/or service payment in dispute will be segregated and stayed
7 pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review,
8 additional amounts are distributable to the Participating Class Members, the cost of administration of the
9 payments to them will be paid out of such additional amounts and not by Defendant. In the event that
10 appellate review is not sought regarding Class Counsel's attorneys' fees and costs, any amount not
11 awarded in attorneys' fees, costs and Enhancement Awards shall be added to the Maximum Settlement
12 Amount and distributed to the Participating Class Members in accordance with the terms of the
13 Settlement.

14 58. Tax Treatment of Individual Settlement Shares.

15 For the purpose of taxes and required withholdings, the Parties agree to the following: (1) 100%
16 of the portion of the Individual Settlement Share resulting from membership in the Former Employee
17 Sub-Class shall constitute penalties (for which an IRS Form 1099 shall issue); (2) 25% of each
18 Individual Settlement Share resulting from membership in the Class shall constitute wages (for which an
19 IRS Form W-2 shall be issued), and 75% shall constitute penalties and interest (for which an IRS Form
20 1099 shall be issued).

21 Prior to the distribution of Individual Settlement Shares, the Settlement Administrator shall
22 calculate the total taxes and withholdings required as a result of the wage portion of the Individual
23 Settlement Share and such actual amount will be deducted therefrom. Additionally, within ten (10)
24 calendar days of the Effective Date, or earlier upon Defendant's request, the Settlement Administrator
25 shall calculate the Employer Taxes due on the wage portion of the Settlement Shares and issue
26 instructions to Defendant to separately fund these obligations. Defendant, Defendant's counsel, the
27 Settlement Administrator, and Class Counsel make no representation as to the tax treatment or legal
28 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not

1 relying on any statement, representation, or calculation by Defendant, Defendant's counsel, Class
2 Counsel, or the Settlement Administrator in this regard. Plaintiff and Participating Class Members
3 understand and agree that they will be solely responsible for the payment of any taxes and penalties
4 assessed on their respective payments described herein and will defend, indemnify, and hold Defendant,
5 Defendant's counsel, Class Counsel and the Settlement Administrator free and harmless from and
6 against any claims resulting from treatment of such payments as non-taxable damages.

7 59. No Effect on Employee Benefit Plans.

8 It is expressly understood and agreed that the receipt of Individual Settlement Shares will not
9 entitle any Participating Class Member to additional or derivative compensation or benefits under any
10 Defendant bonus, contest or other compensation or benefit plan or agreement in place during the period
11 covered by the Settlement, nor will it entitle any Participating Class Member to any increased retirement,
12 401k benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement
13 that the settlement awards provided for in this Agreement are the sole payments to be made by
14 Defendant to the Participating Class Members, and that the Participating Class Members are not entitled
15 to any additional or derivative compensation or benefits as a result of having received the Individual
16 Settlement Shares (notwithstanding any contrary language or agreement in any benefit or compensation
17 plan document that might have been in effect during the period covered by this Settlement).

18 60. Undistributed Funds.

19 In the event that any checks mailed to Participating Class Members remain uncashed after the
20 expiration of 180 days from mailing, or an envelope mailed to a Participating Class Member is returned
21 and no forwarding address can be located for the Participating Class Member after reasonable efforts
22 have been made (including but not limited to skip tracing), then any such funds shall be transmitted to
23 the Settlement Administrator and distributed as follows in accordance with California Code of Civil
24 Procedure section 384:

25 100% to Court Appointed Special Advocates for Children of San Joaquin (serving San
26 Joaquin County), 127 N Sutter St, Stockton, CA 95202.

27 The Settlement Administrator shall apply for and return to Defendant any Employer Taxes paid on the
28 funds from the returned checks.

1 **II. ADMINISTRATION OF THE SETTLEMENT.**

2 61. Duties of the Settlement Administrator.

3 The Settlement Administrator shall perform the duties required by this Settlement by, among
4 other things, and without limitation, (a) receiving and updating through normal and customary
5 procedures the Class List to be produced by Defendant, so that it is updated prior to the mailing of the
6 Class Notice, (b) populating, printing, and mailing the Court-approved Class Notice, (c) responding to
7 Class Member inquiries as appropriate, (d) performing necessary additional skip traces on any notices
8 and/or checks returned as undeliverable, (e) tracking exclusions and calculating the Individual Settlement
9 Shares of the Participating Class Members, (f) resolving disputes during the administration process in the
10 manner described below, (g) reporting to Class Counsel and Defense Counsel regarding administration
11 of the Settlement, (h) establishing the QSF in the manner described below, (ix) preparing and mailing
12 settlement checks to the Participating Class Members, (x) preparing and distributing any necessary
13 CAFA notice documents required by 28 U.S.C. § 1715, (xi) preparing and distributing the Court-
14 approved payments to itself, the LWDA, the Class Representatives, and Class Counsel, (xii) preparing
15 all appropriate tax forms required in connection with the payments called for by this Settlement and
16 remitting those forms and all required payments to the appropriate governmental agencies, providing any
17 leftover funds to the designated *cy pres*; preparing and filing with appropriate agencies all appropriate tax
18 forms required and returning payment to Defendant in connection with a return of Employer taxes owed
19 on returned checks(xiii) preparing a final report summarizing the administration of the Settlement, and
20 (xiv) generally performing all normal and customary duties associated with the administration of such
21 settlements.

22 62. Dispute Resolution.

23 The Settlement Administrator shall have the initial responsibility for resolving any disputes that
24 arise during the administration of the Settlement including, without limitation, disputes regarding
25 whether a Class Member is entitled to an Individual Settlement Share and, if so, the amount thereof. In
26 resolving such disputes, Defendant's employment records shall be presumed accurate and correct, and
27 shall be final and binding unless the information submitted by the individual (e.g., time records, wage
28 statements, employment records, etc.) proves otherwise. In the event that the Settlement Administrator

1 cannot resolve a dispute based upon a review of Defendant's records, the Settlement Administrator will
2 schedule a call with Class Counsel and Defense Counsel to discuss and resolve the dispute. After such
3 call, the Settlement Administrator will resolve the dispute and such resolution will be final and binding
4 on the Class Member.

5 63. Establishing the Qualified Settlement Fund.

6 The Settlement Administrator shall establish for the benefit of the Settlement Class members and
7 from which the Settlement Shares and all other payments under this Agreement shall be paid with the
8 exception of the employer's share of payroll taxes. The Settlement Administrator shall have its own
9 Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own
10 Employer Identification Number and shall transmit the required employers' and employees' share of the
11 withholdings, if any, to the appropriate state and federal tax authorities. The Settlement Administrator
12 shall establish a settlement fund that meets the requirements of a QSF under U.S. Treasury Regulation
13 section 468B-1 and section 468B of the Internal Revenue Code of 1986, as amended (the "Code"). The
14 QSF shall be an interest-bearing account at a federally insured bank that is mutually acceptable to the
15 parties and the Settlement Administrator. The parties agree that the QSF is intended to be a "Qualified
16 Settlement Fund" under Section 468B of the Code and Treas. Reg. Section 1.468B-1, 26 CFR Sections
17 1.468B-1, et seq., and will be administered by the Settlement Administrator With respect to the QSF, the
18 Settlement Administrator shall: (a) open and administer in such a manner as to qualify and maintain the
19 qualification of the QSF as a "Qualified Settlement Fund" under Section 468B of the Code and Treas.
20 Reg. Section 1.468B-1; (b) satisfy all federal, state, and local income and other tax reporting, return, and
21 filing requirements with respect to Defendant and the QSF and any interest or other income earned by
22 the QSF; and (c) satisfy out of the QSF all (i) taxes (including any estimated taxes, interest, or penalties)
23 with respect to the interest or other income earned by the QSF, and (ii) fees, expenses, and costs incurred
24 in connection with the opening and administration of the QSF and the performance of its duties and
25 functions as described in this Settlement Agreement. The aforementioned taxes, fees, costs, and expenses
26 shall be treated as, and included in, the costs of administering the QSF and as Settlement Administration
27 costs. The Settlement Administrator shall provide copies to Defendant of any federal, state, and local
28 income or other tax reporting, return, and filing prepared on Defendant' behalf. The Parties agree to

1 cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry
2 out the provisions of this section.

3 The Settlement Administrator shall be treated as an “administrator” as defined at Treasury
4 Regulation section 1.468B-2(k) for purposes of federal and state income tax reporting with respect to the
5 distributions and payments made under this Settlement Agreement. Accordingly, the Settlement
6 Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2
7 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest at
8 times and in the manner required by the Internal Revenue Code and consistent with this Settlement
9 Agreement. If the Internal Revenue Code, the regulations promulgated thereunder, or other applicable
10 tax law, is changed after the date of this Settlement Agreement, the processes set forth in this section may
11 be modified in a manner to comply with any such changes. Notwithstanding the treatment of the
12 payments to each Settlement Class member above, none of the payments called for by this Settlement
13 Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for
14 any purpose of any applicable benefit or retirement plan, unless required by such plans. Any interest
15 accrued shall inure to the benefit of the Class. The Maximum Settlement Amount shall be deposited into
16 the QSF within ten (10) business days of the Effective Date. Defendant may, at its discretion, deposit the
17 Maximum Settlement Amount at an earlier date.

18 **CLASS LIST, NOTICE TO CLASS MEMBERS, PARTICIPATION IN THE SETTLEMENT,**
19 **AND SETTLEMENT SHARES.**

20 64. Provision of the Class List.

21 Within fifteen (15) calendar days of the Court’s entry of the Order of Preliminary Approval,
22 Defendant shall provide the Settlement Administrator with the Class List containing the following for
23 each Class Member: (a) name, (b) last known address and telephone number, (c) social security number,
24 (d) pay period data, including the number of Workweeks the employee worked as a direct employee of
25 Defendant during the Class Period, and (e) employment status during the Class Period.

26 65. Notice to Class Members.

27 Promptly upon receipt of the Class List, the Settlement Administrator shall access the National
28 Change of Address Database (“NCOA”) and update the addresses provided by Defendant. The

1 Settlement Administrator shall also populate the Class Notice as appropriate. Within fifteen (15)
2 calendar days after receipt of the Class List, the Settlement Administrator shall mail the Class Notice to
3 each Class Member via first-class mail. For each notice returned as undeliverable before the Response
4 Deadline, the Settlement Administrator shall promptly attempt to determine a correct address using its
5 best efforts and shall, within three (3) business days of receipt of the returned mail, resend the Notice
6 Packet to any new address determined thereby. Any costs incurred by having the Settlement
7 Administrator handle these administrative tasks shall be included in the Settlement Administrator costs
8 approved by the Court. Any re-mailed Class Notice shall be identical to the original Class Notice, except
9 that it may identify a new Response Deadline as necessary.

10 66. Proof Of Mailing.

11 At least five (5) calendar days prior to the Final Approval Hearing, the Settlement Administrator
12 shall provide a declaration of due diligence and proof of mailing regarding mailing of the Class Notice to
13 Class Counsel and Defendant's Counsel, which they shall in turn provide to the Court.

14 67. No Claim Form Required.

15 Each Participating Class Member shall be entitled to a share of the Net Settlement Amount.
16 Participating Class Members shall not be required to complete a claim form. Class Members shall
17 receive a Class Notice informing them of the terms of the Settlement Agreement, their right to opt-out
18 and/or object, and an estimate of their share of the Net Settlement Amount. Unless a Class Member
19 elects to opt-out, he or she will be a Participating Class Member. Individual Settlement Shares will be
20 mailed to all Participating Class Members. Class Members who were employed by Defendant at
21 any time during the PAGA Settlement Period (defined as June 11, 2019 through May 4, 2021)
22 shall not be given the opportunity to opt-out of the settlement of the Released PAGA Claims.

23 68. Calculation of Individual Settlement Shares.

24 Individual Settlement Shares shall consist of a payment from (i) the Net Class Settlement
25 Amount for Participating Settlement Class Members and (ii) a payment from the Net PAGA Settlement
26 Amount for those Class Members employed during the PAGA Settlement Period (regardless of whether
27 he/she elects to opt out of the Settlement).
28

1 The Net Class Settlement Amount shall be allocated as follows: \$250 for each Participating
2 Former Employee Sub-Class Member (the “Former Employee Set-Aside”), and the remainder to be
3 distributed to Class Members as outlined herein. Individual Settlement Shares for Class Members (i.e.
4 not including the Former Employee Set-Aside) shall generally be based upon the number of workweeks
5 worked by Participating Class Members during the Class Period.

6 The amount of each Participating Settlement Class Member’s Individual Settlement Share from
7 the Net Class Settlement Amount shall be determined by the Settlement Administrator as follows:

8 The Individual Settlement Shares will be proportionally based upon the number of Workweeks
9 worked by Participating Class Members during the Class Period. The Workweeks worked by
10 each Participating Class Member shall be divided by the total Workweeks worked by all
11 Participating Class Members resulting in a payment ratio for each Participating Class Member.
12 Each Participating Class Member’s Payment Ratio is then multiplied by the Net Settlement
13 Amount, less the Former Employee Set-Aside, to determine his or her Individual Settlement
14 Share.

15 The amount of each Settlement Class Member’s Individual Settlement Share from the Net
16 PAGA Settlement Amount shall be determined by the Settlement Administrator as follows: The
17 Individual Settlement Shares will be proportionally based upon the number of Pay Periods worked by
18 Settlement Class Members during the PAGA Settlement Period. Class Members will receive the portion
19 of the Net PAGA Settlement Amount to which they are entitled regardless of whether he/she elects to
20 opt out of the Class. The Settlement Administrator shall mail the Individual Settlement Shares to Class
21 Members within twenty (20) calendar days of the Effective Date or within twenty (20) calendar days of
22 the funding of the QSF, whichever is later.

23 69. Procedures for Challenges.

24 A Class Member may, before the Response Deadline, dispute the amount of his or her Individual
25 Settlement Share, and the data used to calculate it, by timely sending a written notice to the Settlement
26 Administrator informing the Settlement Administrator of the nature of the dispute and providing any
27 records or documentation supporting their position. In response to such a challenge, Defendant will first
28 verify the accuracy of the information contained in its records. Next, Class Counsel and Defense

Counsel will make a good faith effort to resolve the dispute informally. If Class Counsel and Defense Counsel are unable to agree, the dispute shall be resolved by the Settlement Administrator after examination of the records provided by the Class Member and Defendant. The Settlement Administrator's determination will be final and binding.

If, before the Response Deadline, an individual not previously identified in the Class List asserts his or her membership in the Class and seeks recovery under the Settlement, the Settlement Administrator shall provide Class Counsel and Defense Counsel with the evidence submitted by the individual. To be eligible for recovery under this Settlement, individuals must provide sufficient proof to the Settlement Administrator supporting his or her request for inclusion, including specific evidence establishing that he or she qualifies as a Class Member as defined herein. If Class Counsel and Defense Counsel agree an individual is not a Class Member, the Settlement Administrator will inform the individual that their request for inclusion has been rejected. If Class Counsel and Defense Counsel are unable to agree, the dispute shall be resolved by the Settlement Administrator after examination of the records provided by the Class Member and Defendant. The Settlement Administrator's determination will be final and binding.

EXCLUSIONS, OBJECTIONS AND BINDING EFFECT OF SETTLEMENT.

70. Right to Opt-Out of Settlement.

The Class Notice will advise each Class Member of their right to exclude themselves from or opt-out of the settlement of the Released Claims (but not the Released PAGA Claims). To be effective, requests for exclusion must (a) be submitted in writing to the Settlement Administrator, postmarked on or before the Response Deadline (i.e., no later than 45 calendar days from the date of mailing of the Class Notice or fifteen (15) calendar days after re-mailing, whichever is later); (b) contain the individual's full name, current home (or mailing address), and the last four digits of his or her social security number; (c) be signed by the individual; and (d) include written affirmation of his or her desire to exclude themselves containing the following or substantially similar language:

"I elect to opt-out of the *Rodriguez/Ugale v. Allen Distribution, LP, et al* class action settlement.

I understand that by doing so, I will not be able to participate in the settlement, and will not receive a share of the settlement."

1 The Settlement Administrator shall notify Class Counsel and Defense Counsel within 48 hours
2 of its receipt of requests for exclusion, including the identity of the individual requesting exclusion. The
3 Class Notice shall include the specific address to which requests for exclusion must be mailed as well as
4 a summary of this paragraph. Any Class Member who timely requests exclusion from this Settlement
5 shall not have any rights under the Settlement as to the Net Class Settlement Amount, , shall not be
6 bound by the Settlement or the Order of Final Approval as to the Settlement and the other Released
7 Claims (but will be bound by the Settlement of the Released PAGA Claims), and shall not have the right
8 to file an objection to the Settlement. No Class Member responses of any kind that are postmarked after
9 the relevant Response Deadline shall be considered. Responses from Class Members must be
10 postmarked for mail with the U.S. Postal Service. Responses sent by facsimile, email, or other forms of
11 electronic transmission will not be considered.

12 Class Members employed by Defendant during the PAGA Settlement Period shall not be
13 permitted the opportunity to opt-out of the PAGA portion of the settlement, including waiver of
14 the Released PAGA Claims, and shall receive a proportional share of the Net PAGA Settlement
15 Amount regardless of whether they opt-out of the Class.

16 71. Right of Class Members to Object to Settlement.

17 The Class Notice will advise each Class Member of their right object to the Settlement. To be
18 effective, the Class Member cannot opt-out and his or her objection must (a) be mailed to the Court,
19 postmarked on or before the Response Deadline (i.e., no later than 45 calendar days from the date of
20 mailing of the Class Notice or fifteen (15) calendar days after re-mailing, whichever is later); (b) clearly
21 identify the case name and number; (c) contain the objector's full name, current home (or mailing
22 address), and the last four digits of his or her social security number; (d) clearly and concisely state all
23 grounds for the objection; (e) indicate whether the objector is represented by counsel and, if so, identify
24 such counsel; (f) indicate whether the objector or his or her counsel intend to appear at the Final
25 Approval Hearing; and (g) be signed by the objector or his or her counsel.

26 The Class Notice shall include the specific address to which objections must be mailed as well as
27 a summary of this paragraph. No Class Member may be heard at the Final Approval Hearing unless he
28 or she has complied with these requirements, or any requirements mandated by the Court, and any Class

Member who fails to comply with said requirements shall be deemed to have waived his or her right to object to the Settlement unless the Court orders otherwise. The Parties will not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any objections to the Settlement and/or appeals arising therefrom. Any Class Member whose objection is overruled will be deemed to be a Participating Class Member and subject to the terms of this Settlement and the Court's Order of Final Approval.

72. Acknowledgment of Binding Terms of the Settlement.

Class Counsel, Plaintiffs, and the Participating Class Members acknowledge that they may hereafter discover facts or law different from, or in addition to, the facts or law they know or believe to exist with respect to the Released Claims. Class Counsel, Plaintiffs, and the Participating Class Members nonetheless agree that this Agreement and the Released Claims contained herein shall be and remain effective in all respects notwithstanding such different or additional facts or law regarding such Released Claims. Class Counsel, Plaintiff, and the Participating Class Members will bound by the terms and conditions of this Settlement, the Court's Order of Final Approval, and the releases set forth herein.

RELEASES

73. Released Claims.

As of the Effective Date or the funding of the QSF with the Maximum Settlement Amount, whichever is later, and in exchange for the consideration provided herein, the Participating Class Members, i.e., those that do not opt-out, and their respective heirs, beneficiaries, devisees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, and assigns, shall forever and completely release and discharge Defendant and Released Parties from the Released Claims, defined as means all claims that were or could have been raised based on the factual allegations made in the Action. This includes but is not limited to: (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment under the California Labor Code, the FLSA or common law; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to pay sick pay; (f) failure to pay final wages due at separation; (g) failure to reimburse or indemnify all necessary business expenses; (h)

claims brought under Business & Professions Code section 17200, *et seq.*, including, but not limited to all claims for unfair, unlawful and harmful conduct to class members, the general public, and Defendants' competitors and claims of unlawfully gaining an unfair advantage over other businesses; (i) claims under PAGA for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the Action, including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 245.5-249, 510, 512, 558, 1174, 1174.5, 1182.12, *et seq.*, 1194, 1194.2, 1197, 1198, 2800, 2802 and any applicable Wage Order; (j) claims of any nature, related to or arising out of or related to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 245.5-249, 510, 512, 558, 1174, 1174.5, 1182.12, *et seq.*, 1194, 1194.2, 1197, 1198, 2800, 2802 and any applicable Wage Order; (k) penalties of any nature; (l) interest; and (m) attorneys' fees and costs that occurred at any time during the Class Period.

74. Released PAGA Claims.

In the event Settlement Class Members opt-out of the of the settlement of the Released Claims, they will still be bound by the settlement of the Released PAGA Claims. This includes, but is not limited to, all claims under PAGA for civil penalties that were or could have been raised based on the factual allegations made in the Action, including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 245.5-249, 510, 512, 558, 1174, 1174.5, 1182.12, *et seq.*, 1194, 1194.2, 1197, 1198, 2800, 2802 and any applicable Wage Order.

75. Release by Plaintiffs.

As of the Effective Date or the funding of the QSF with the Maximum Settlement Amount, whichever is later, in addition to the Released Claims, and in consideration for receipt of an Enhancement Payment, Plaintiff Rodriguez and Ugale each expressly additionally release all claims relating to his/her respective employment with Defendant, conditions of employment, or the termination of that employment, including but not limited to, claims for, breach of contract, breach of the covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress; defamation; wrongful discharge; retaliation; harassment; violation of public policy; constructive discharge; whistleblowing; interference with prospective economic advantage or contractual relations; unfair business practices; unfair competition; or other tort or personal injury; violation of any federal, state, or

1 other governmental statute, regulation, or ordinance, including, without limitation violation of Title VII
2 of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act,
3 the California Fair Employment and Housing Act, the California Family Rights Act, the California
4 Labor Code or any Industrial Welfare Commission Wage Order, and vested benefits under the
5 Employee Retirement Income Security Act. Plaintiffs expressly waive and relinquish all rights and
6 benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding
7 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the
8 State of California states:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST
11 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND
12 THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED
13 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

14 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and
15 complete release and discharge of Defendant and Released Parties, Plaintiffs expressly acknowledge that
16 this Settlement is intended to include in its effect all claims that Plaintiffs knows of, as well as all claims
17 that each/either does not know or suspect to exist in his/her favor against Defendant and Released
18 Parties, and that this Settlement contemplates the extinguishment of any such claims.

19 **FINAL SETTLEMENT APPROVAL.**

20 76. Final Approval Hearing.

21 Class Counsel will take all necessary steps to secure the Court's final approval of this Settlement.
22 Defense Counsel agrees not to oppose Class Counsel's request for final approval of this Settlement as
23 long as the Class Counsel's request for final approval is consistent with the terms of this Settlement. A
24 Final Approval Hearing shall be held for the purpose of purpose of considering, *inter alia*, (a) the
25 fairness, adequacy, and reasonableness of the Settlement, (b) the Service Payment to Plaintiffs, (c) the
26 fees and reasonable costs of Class Counsel, and (d) the propriety of any timely objections as well as
27 Class Counsel's and Defense Counsel's response thereto. The date of the Final Approval Hearing shall
28 be set by the Court, and notice of such shall be provided to Class Members in the Class Notice.

1 Although the Court may continue the Final Approval Hearing without further notice to the Class
2 Members.

3 Plaintiffs will respectfully request the Court enter an Order of Final Approval, and Defendant
4 agrees not to oppose as long as the Order of Final Approval remains consistent with the terms of this
5 Settlement:

- 6 (i) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
7 adequate, and directing consummation of its terms and provisions;
- 8 (ii) Approving payment to the Settlement Administrator;
- 9 (iii) Approving the Enhancement Awards to the Plaintiffs for their service as Class
10 Representative;
- 11 (iv) Approving Class Counsel's application for fees and reasonable costs;
- 12 (v) Permanently enjoining and restraining Participating Class Members from and against
13 initiating or pursuing against Defendant any individual, representative, or class claims
14 encompassed by the Released Claims;
- 15 (vi) Entering judgment in this Class Action consistent with the terms of this Settlement; and
- 16 (vii) Retaining jurisdiction to the extent necessary over the subject matter of the Class Action
17 and over the Parties and Class Members to enforce the terms of the Settlement.

18 **TERMINATION OF THE SETTLEMENT.**

19 77. Defendant's Right to Terminate the Settlement.

20 Notwithstanding any other provision in this Settlement, if 5% or more of the Class Members opt
21 out of the Settlement, Defendant shall have the right, in its sole discretion, to rescind, nullify, and
22 terminate the Settlement within fifteen (15) calendar days after the expiration of the Response Period.
23 The Settlement Administrator shall notify Defense Counsel and Class Counsel via email immediately if
24 the 5% threshold for opt-outs is exceeded. If Defendant exercises this right, however, it shall be
25 responsible for the reasonable fees and costs of the Settlement Administrator to that point.

26 78. Effect of Termination.

27 If the Settlement is terminated in accordance with the terms set forth herein (a) the Settlement
28 shall have no force or effect, and no party shall be bound by any of its terms; except as otherwise

provided herein, (b) the Order of Preliminary Approval and/or Order of Final Approval shall be vacated, (c) the Settlement and all negotiations, statements, and proceedings related thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Class Action prior to the settlement, and (d) neither this Settlement Agreement, nor the filings in connection with the sought approval thereof shall be admissible or offered into evidence in the Class Action or in any other action for any reason whatsoever.

79. Nullification of Settlement Agreement.

In the event: (a) the Court does not grant approval of the Settlement as provided herein; (b) the Court does not grant final approval of the Settlement as provided herein; (c) the Court does not enter a Final Judgment as provided herein; or (d) the Settlement does not become final for any other reason, this Settlement Agreement shall be deemed null and void, including Defendant's obligation to fund the Maximum Settlement Amount; provided, however, that reduction by the Court of Class Counsel fees and costs or a reduction by the Court of Plaintiffs' Enhancement Awards shall not render this Settlement null and void. In the event this Settlement Agreement is rendered null and void as set forth herein, any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning, and the stipulations and recitals contained herein shall be of no force or effect, and shall not be treated as an admission by the Parties or their Counsel. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement; the Parties shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court; and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed and no individual or entity shall be entitled to the payment amounts contemplated herein, except that any costs already incurred by the Settlement Administrator shall be paid in equal parts by Plaintiffs and Defendant.

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MISCELLANEOUS TERMS.

80. Mutual Cooperation.

1 The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement
2 Agreement, including but not limited to, executing and amending such documents and taking such other
3 actions as may reasonably be necessary to implement the terms of this Settlement Agreement. The
4 Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and
5 any other efforts that may become necessary by order of the Court or otherwise, to effectuate this
6 Settlement Agreement and the terms set forth herein. Neither party, nor their counsel, employees, or
7 agents, shall solicit or encourage any Class Member to exclude themselves from the Settlement or object
8 to the Settlement.

9 81. Non-Evidentiary Use.

10 Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible
11 in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement;
12 provided, however, that this Settlement Agreement may be used by Defendant and/or the Released
13 Parties to prove or defend against any claim released herein by Plaintiff or any Settlement Class member
14 in any claim or threatened claim, including but not limited to any judicial, quasi-judicial, administrative,
15 or governmental proceeding. Neither this Settlement Agreement or its terms, nor any statements or
16 conduct in the negotiation or drafting of it, shall be admissible, offered, or used as evidence by the
17 Parties, any Settlement Class member, or their respective counsel in the Action or in any other
18 proceeding as evidence of liability or wrongdoing by Defendant and/or the Released Parties, or for any
19 purpose whatsoever. If Final Approval does not occur, the Parties agree that this Settlement Agreement
20 is void, but remains protected by California Evidence Code Section 1152. In the event of non-approval
21 by the Court, the Parties may not use the fact that the Parties agreed to settle the case (nor any
22 communications regarding the Settlement or any confidential data provided for settlement purposes
23 only), as evidence of Defendant's liability.

24 82. Modification.

25 This Settlement Agreement may not be changed, altered, or modified, except in writing and
26 signed by counsel for the Parties, and approved by the Court, provided however that changes solely to
27 the timing and deadlines herein may be made for administrative convenience by written agreement of
28 counsel for all Parties without Court approval. This Settlement Agreement may not be discharged

except by performance in accordance with its terms or by a writing signed by the Parties hereto and approved by the Court.

83. Integration Clause – Entire Agreement.

This Settlement Agreement and the attached exhibits contain the entire agreement between the Parties relating to the settlement of the Class Action and the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. In entering into this Settlement Agreement, none of the Parties has relied on any representation or promise not expressly set forth in this Settlement Agreement. No rights hereunder may be waived except in writing.

84. Class Counsel Signatories.

It is agreed that because of the anticipated large number of Participating Class Members, it will be impossible or impractical to have each Participating Class Member execute this Settlement Agreement. As such, Class Counsel is signing on behalf of the Participating Class Members. In addition, the Notice will advise Class Members of the binding nature of the Settlement, and their right to Opt-Out and/or object, and shall have the same force and effect as if it were executed individually by each Participating Class Member.

85. Interim Stay of Proceedings.

Pending the completion of the approval process, the Parties agree to a stay of all proceedings in the Action except those necessary to implement the Settlement itself.

86. Notices.

Any notices, requests, requests, demands, or other communications required or necessitated by this Settlement Agreement shall be in writing and, except as provided elsewhere in this Settlement Agreement, shall be delivered as follows:

If to Plaintiffs or Class Counsel, then to:

Robert J. Wasserman, Esq.
Jenny D. Baysinger, Esq.
Mayall Hurley P.C.
2453 Grand Canal Blvd.
Stockton, CA 95207

If to Defendant or Defense Counsel, then to:

Matthew B. Golper, Esq.
Ballard Rosenberg Golper and Savitt,
LLP
600 Anton Blvd., 11th Floor
Costa Mesa, CA 92626

Email: rwasserman@mayallaw.com
Email: jbaysinger@mayallaw.com

Email: mgolper@brgslaw.com

AND

AND

Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Arsine Grigoryan, Esq.
Justice Law Corporation
751 N. Fair Oaks Ave., Suite 101
Pasadena, CA 91103
Email: ghan@justicelawcorp.com
Email: statavos@justicelawcorp.com
Email: agrigoryan@justicelawcorp.com

Andrew L. Levy, Esq.
McNees Wallace & Nurick, LLC
100 Pine Street
Harrisburg, PA 17101
Email: alevy@mcneeslaw.com

87. Resolution of Disputes Arising from Preparation of Settlement Agreement.

If the Parties have a dispute with regard to the preparation of this Settlement Agreement, they agree to first attempt to resolve the dispute informally through good-faith negotiations, but if those efforts are unsuccessful, they agree to seek the guidance of their mediator, Marc Feder, Esq. The Parties will split the cost of the mediator, and all Parties will bear their own fees and costs.

88. Retention of Jurisdiction by the Court.

Following approval of the Settlement and the Court's entry of the Order of Final Approval, the Court that issues such order shall retain jurisdiction for the purpose of addressing any issues which may arise with respect to the administration of the Settlement or the enforcement of the Settlement's terms.

89. Choice of Law.

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

90. Construction.

This Agreement is entered into freely and voluntarily without duress or undue pressure or influence of any kind or nature whatsoever and neither Party has relied on any promises, representations or warranties regarding the subject matter hereof other than as set forth in this Agreement. Each Party has been represented by counsel in the settlement negotiations leading up to, and in connection with the preparation and execution of, this Settlement Agreement. The Parties acknowledge and agree that all Parties had an equal hand in drafting this Agreement so that it shall not be deemed to have been prepared

1 or drafted by one Party or another. All Parties waive the provisions of California Civil Code section
2 1654 (and any other equivalent state, federal, or local provision), which provides, in part, that “the
3 language of a contract should be interpreted most strongly against the Party who caused the
4 uncertainty to exist.”

5 91. Execution in Counterparts.

6 This Agreement may be executed in counterparts, by facsimile and/or by electronic
7 signature/PDF, each of which shall be deemed an original, and all of which together shall constitute one
8 and the same instrument. Any signature to this Agreement transmitted by facsimile or electronically and
9 any copies of any signatures are valid and binding.

10 92. Authority.

11 The individuals signing this Agreement represent and warrant that they are authorized to do so.
12 Those individuals likewise represent and warrant that they have the authority to execute this Agreement
13 and to take all appropriate action required and permitted to be taken by this Agreement, except such
14 action that is the prerogative of the Court.

15 Dated: May ____, 2021

PLAINTIFF AND THE CLASS REPRESENTATIVE

16
17 By: _____
JOBANY RODRIGUEZ

18 05/07/2021
Dated: ~~May~~ ____, 2021

PLAINTIFF AND THE CLASS REPRESENTATIVE

19
20 By:  _____
JANET UGALE

21 Dated: May ____, 2021

ALLEN DISTRIBUTION, L.P.

22
23 By: _____

24
25 Authorized Representative for
26 ALLEN DISTRIBUTION, L.P.

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APPROVED AS TO FORM

MAYALL HURLEY P.C.

Dated: May ____, 2021

By: _____

Robert J. Wasserman
Jenny D. Baysinger
Attorneys for Plaintiffs

Dated: May 7, 2021

JUSTICE LAW CORPORATION

By:  _____

DOUGLAS HAN

Attorneys for Plaintiff Janet Ugale, the Class
Representative, and Settlement Class

Dated: May ____, 2021

BALLARD ROSENBERG GOLPER AND
SAVITT, LLP

By: _____

MATTHEW B. GOLPER
Attorneys for Defendant
ALLEN DISTRIBUTION, L.P.

or drafted by one Party or another. All Parties waive the provisions of California Civil Code section 1654 (and any other equivalent state, federal, or local provision), which provides, in part, that “the language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.”

91. Execution in Counterparts.

This Agreement may be executed in counterparts, by facsimile and/or by electronic signature/PDF, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any signature to this Agreement transmitted by facsimile or electronically and any copies of any signatures are valid and binding.

92. Authority.

The individuals signing this Agreement represent and warrant that they are authorized to do so. Those individuals likewise represent and warrant that they have the authority to execute this Agreement and to take all appropriate action required and permitted to be taken by this Agreement, except such action that is the prerogative of the Court.

Dated: ^{6/3/2021}May ____, 2021

PLAINTIFF AND THE CLASS REPRESENTATIVE

By:  DocuSigned by:
FCC61767D6F1407
JOBANY RODRIGUEZ

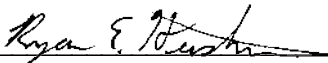
Dated: May ____, 2021

PLAINTIFF AND THE CLASS REPRESENTATIVE

By: _____
JANET UGALE

Dated: May 31, 2021

ALLEN DISTRIBUTION, L.P.

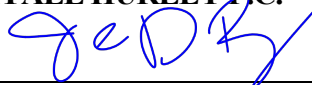
By:  _____

Authorized Representative for
ALLEN DISTRIBUTION, L.P.

APPROVED AS TO FORM

MAYALL HURLEY P.C.

Dated: June 3, 2021

By: 

Robert J. Wasserman
Jenny D. Baysinger
Attorneys for Plaintiffs

Dated: May ____, 2021

JUSTICE LAW CORPORATION

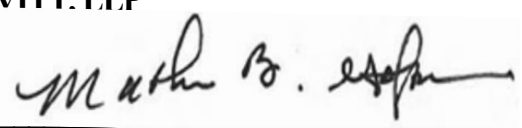
By: _____

DOUGLAS HAN

Attorneys for Plaintiff Janet Ugale, the Class
Representative, and Settlement Class

Dated: June 3, 2021

**BALLARD ROSENBERG GOLPER AND
SAVITT, LLP**

By: 

MATTHEW B. GOLPER
Attorneys for Defendant
ALLEN DISTRIBUTION, L.P.

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

JOBANY RODRIGUEZ and JANET UGALE,
individually and on behalf of all others
similarly situated and as proxy for the LWDA

Plaintiffs,

v.

ALLEN DISTRIBUTION, L.P., and DOES 1-
100, inclusive,
Defendant.

CASE NO. STK-CV-UOE-2020-0005807

**NOTICE OF PENDENCY OF
CLASS ACTION, PRELIMINARY
APPROVAL OF SETTLEMENT,
AND HEARING FOR FINAL APPROVAL**

**IMPORTANT: THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.
YOU ARE NOT BEING SUED.**

**TO: ALL CURRENT AND FORMER NON-EXEMPT EMPLOYEES DIRECTLY EMPLOYED BY
DEFENDANT WITHIN CALIFORNIA AT ANY TIME BETWEEN JUNE 16, 2016 AND MAY 4,
2021**

**RE: Notice of settlement of a class action lawsuit for alleged Labor Code violations and
announcement of a court hearing that you may choose to attend. You are entitled to
receive a payment under the terms of this class action settlement.**

YOUR LEGAL RIGHTS AND OPTIONS UNDER THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will receive a payment under the terms of the Settlement.
EXCLUDE YOURSELF	If you wish to be excluded from the Settlement, you must submit a written election not to participate known as an "opt-out." If you opt out, you will not receive any benefits under the Settlement, except a portion of the PAGA payment if you worked for Defendant during the PAGA period.
OBJECT	You may write to the Court, Class Counsel, and Defendant's Counsel about why you do not like the Settlement. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. This option is only available if you do not exclude yourself from the settlement.
GO TO A HEARING	Write to the Court, Class Counsel, and Defendant's Counsel and ask to speak to the Court about why you do not like the Settlement, or write to Class Counsel to obtain instructions about how to attend the remote final approval hearing.

YOUR OPTIONS ARE MORE FULLY EXPLAINED BELOW.

THE DEADLINE TO OPT-OUT OR OBJECT TO THE SETTLEMENT IS _____, 2021.

1. WHY DID I RECEIVE THIS NOTICE?

Plaintiffs Jobany Rodriguez and Janet Ugale (collectively “Plaintiffs”) and Defendant Allen Distribution, LP (“Defendant” or “Allen”, collectively with Plaintiffs, the “Parties”) have proposed to settle this class action lawsuit. Your employment records indicate that you are a member of the Settlement Class. If the Court approves the Settlement, your legal rights may be affected. This court-approved Notice of Pendency of Class Action, Preliminary Approval of Settlement, and Hearing for Final Approval (“Notice”) is only a summary. A more detailed document, called the “Joint Stipulation of Class and Representative Action Settlement Agreement and Release” (the “Settlement”), containing the complete terms is on file with the Court as part of the motion for preliminary approval, and is available for your review on the Court’s website.

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff Rodriguez filed a lawsuit against Defendant on June 16, 2020, in the United States District Court, Eastern District of California case number 2:20-cv-01202-KJM-CKD (the “Rodriguez Matter”). On July 8, 2020, Plaintiff Ugale filed this lawsuit in the Superior Court of California, County of San Joaquin. On _____, 2021, the Rodriguez Matter was added to the instant lawsuit through a First Amended Class Action Complaint. Through the operative complaint, Plaintiffs allege that, during their respective employment, Defendant had a policy, pattern, and practice of failing to properly calculate and pay minimum wage, overtime, and redeemed sick leave, failing to provide meal and rest periods, failing to pay all wages due at the time of separation, failing to provide accurate, itemized wage statements that provide all of the information required by Labor Code section 226(a)(2), and failing to reimburse all employee business expenses. Plaintiffs also asserted a claim alleging violation of California’s Unfair Competition Law and to assess and collect civil penalties pursuant to the California Labor Code Private Attorneys’ General Act of 2004 (Cal. Labor Code §§ 2698, et seq.).

Defendant denies any liability or wrongdoing of any kind and maintains its practices were lawful, and is confident it has strong legal and factual defenses to the alleged claims.

This Settlement is a compromise reached after good faith, arm’s length negotiations between the Parties, through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiffs also believe the Settlement is in the best interests of all Class Members.

The Court has made no determination about the strengths and weaknesses of the claims or contentions of either Plaintiffs or Defendant.

3. WHO IS COVERED BY THE CLASS ACTION AND PROPOSED SETTLEMENT?

The Settlement covers the claims of a Class and a Former Employee Sub-Class defined as follows:

Class

All current and former non-exempt employees directly employed by Defendant within California at any time between June 16, 2016 and May 4, 2021. (the “Class Period”).

Former Employee Sub-Class

All Class Members whose employment with Defendant ended at any time between June 16, 2017 and March 4, 2021.

PAGA Aggrieved Employee

All Class Members who were employed by Defendant at any time between June 11, 2019 and May 4, 2021 (the "PAGA Settlement Period").

A. The Effect of Membership in the Settlement Class.

If you are a Class Member as defined above, you are automatically a “Participating Class Member” unless you opt-out (i.e., exclude yourself from the Settlement by following the procedures set forth in this Notice). Participating Class Members are entitled to a share of the “Net Class Settlement Amount” (or, “NSA”) and will be bound by the Settlement if it is approved by the Court. Individuals who opt-out will not be bound by the Settlement, except as to the Released PAGA Claims, and will not be eligible to receive a payment from the Net Class Settlement Amount.

4. WHAT ARE THE TERMS OF THE SETTLEMENT?

The proposed Settlement was agreed upon between Defendant, Plaintiffs, and Class Counsel following extensive litigation including informal information/data exchange, a full-day mediation, and months of negotiations. The Parties concluded, after taking into account the risks and costs attendant to further litigation and substantial benefits to be received pursuant to the Settlement, that the Settlement is fair, adequate, and in the best interest of the Class Members. The Superior Court of California, County of San Joaquin, by and through the Honorable Barbara A. Kronlund, approved the Settlement on a preliminary basis on [REDACTED], 2021.

A. Overall Summary of the Settlement Terms.

Defendants will pay \$658,980.00 to settle this case (referred to as the “Maximum Settlement Amount” or “MSA”). The MSA includes payments to Participating Class Members, the fees and costs of the Settlement Administrator, Class Representative Enhancement Payments to Plaintiffs, and Class Counsel’s attorneys’ fees and costs, as well as a payment for the PAGA Released Claims.

B. Costs of Settlement Administrator.

The Parties have agreed to employ Simpluris, Inc. to serve as Settlement Administrator. The Settlement Administrator’s fees and costs for administering the Settlement, estimated to be no more than \$6,500.00, if approved by the Court, will be paid out of the MSA.

C. Payment for Released PAGA Claims.

The Parties have allocated \$40,000 of the MSA to any civil penalties that could be awarded pursuant to the California Labor Code Private Attorneys General Act (the “PAGA”). Of that amount, \$30,000 will be paid to the California Labor and Workforce Development Agency, and the remaining amount (\$10,000) will comprise the Net PAGA Settlement Amount and will be distributed to all Class Members who are PAGA Aggrieved Employees, *including those who opt out of the Net Class Settlement Amount*, on a proportional basis based on the number of pay periods that the individual worked during the PAGA Settlement Period (June 11, 2019 through May 4, 2021), if any.

D. Class Representative Enhancement Payments.

Plaintiffs have been approved by the Court to serve as “Class Representatives.” As Class Representatives, Plaintiffs are entitled to a payment for their services to the Class. The Parties have agreed, and the Court has preliminarily approved a payments of \$7,500 to each Plaintiff, \$15,000 total, for their services to the Class.

E. Class Counsel’s Fees and Costs.

Class Counsel, Mayall Hurley, P.C. and Justice Law Corporation, are entitled to attorney’s fees and costs for representing the Class Members. Class Counsel will request attorneys’ fees of 35% of the MSA, or \$230,643, and reimbursement of litigation costs of up to \$20,000. Class Counsel has agreed to share any fees awarded 55% to Mayall Hurley, P.C. and 45% to Justice Law Corporation, subject to Court approval. Defendant does not object to Class Counsel’s request. The Court has preliminarily approved payment to Class Counsel in the amounts set forth above.

F. Allocation of the Net Class Settlement Amount.

After deduction from the MSA for Class Counsel’s attorney’s fees and costs, the Class Representative payments, the PAGA Payments, and the costs of administering the Settlement, there will be a Net Class Settlement Amount (“NCSA”). The NCSA, expected to be \$346,837, shall be allocated as follows, subject to the Court’s approval of these amounts:

Each Former Employee Sub-Class Member shall receive a payment of \$250 (the “Former Employee Set-Aside”). The remainder of the NCSA shall be divided between the Participating Class Members on a pro rata basis based on the number of Workweeks worked within the Class Period.

G. What Can I Expect to Receive?

The payments to Class Members will be calculated as follows:

i. For Class Members from Net Class Settlement Amount.

For Participating Class Members that do not opt out, the Individual Settlement Shares will be proportionally based upon the number of Workweeks worked by Participating Class Members during the relevant period. The Workweeks worked by each Participating Class Member shall be divided by the total Workweeks worked by all Participating Class Members resulting in a payment ratio for each Participating Class Member. Each Participating Class Member’s Payment Ratio is then multiplied by the Net Class Settlement Amount, less the Former Employee Set-Aside, to determine his or her Individual Settlement Share.

Participating Former Employee Sub-Class Members will receive an additional \$250.00.

ii. For PAGA Aggrieved Employees From Net PAGA Settlement Amount.

The \$10,000 Net PAGA Settlement Amount will paid proportionally based upon the number of pay periods worked by Class Members who are also PAGA Aggrieved Employees during the PAGA Settlement period, if any.

Defendant's records indicate that you are a member of the [REDACTED] Class and/or the [REDACTED] Class and/or are an Aggrieved Employee. The records also indicate that you worked: (a) [REDACTED] workweeks during the Class Period (b) [REDACTED] pay periods during the PAGA Settlement Period. It is estimated that your total payment will be \$[REDACTED]. It will not be possible to know the exact amount of your payment until the response deadline has passed and the Settlement Administrator knows the number of Participating Class Members.

25% of the payments to the Class Members will be treated as wages and reported on a W-2 Form, and the remaining 75% will be treated as penalties and interest and reported on a Form 1099. The payments to the Former Employee Sub-Class will be treated 100% as penalties and will be reported on a Form 1099, with no tax withholding. In addition, 100% of payments distributed from the Net PAGA Settlement Amount will be designated as penalties and issued pursuant to an IRS Form 1099.

Any and all Employer-side Taxes that Defendant would normally be responsible for paying will be paid by Defendant in addition to the Maximum Settlement Amount. Participating Class Members are responsible for any other taxes owing on their settlement payment(s).

5. WHAT AM I GIVING UP IF I DO NOT OPT OUT OF THE SETTLEMENT?

Each Participating Class Member shall forever and completely release and discharge Defendant and Released Parties from the Released Claims.

"Released Parties" means (a) Defendant Allen Distribution, L.P.; b) each of Defendant's respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendant; (c) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (d) any individual or entity which could be jointly liable with any of the foregoing.

"Released Claims" means all claims that were or could have been raised based on the factual allegations made in the Action. This includes but is not limited to: (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment under the California Labor Code, the FLSA or common law; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to pay sick pay; (f) failure to pay final wages due at separation; (g) failure to reimburse or indemnify all necessary business expenses; (h) claims brought under Business & Professions Code section 17200, *et seq.*, including, but not limited to all claims for unfair, unlawful and harmful conduct to class members, the general public, and Defendants' competitors and claims of unlawfully gaining an unfair advantage over other businesses; (i) claims under PAGA for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the Action, including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 245.5-249, 510, 512, 558, 1174, 1174.5, 1182.12, *et seq.*, 1194, 1194.2, 1197, 1198, 2800, 2802 and any applicable Wage Order; (j) claims of any nature, related to or arising out of or related to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 245.5-249, 510, 512, 558, 1174, 1174.5, 1182.12, *et seq.*, 1194, 1194.2, 1197, 1198, 2800, 2802 and any applicable Wage Order; (k) penalties of any nature; (l) interest; and (m) attorneys' fees and costs that occurred at any time during the Class Period.

If you do NOT exclude yourself by following the procedures set forth in this Notice and the Court approves the proposed Settlement, you will be deemed to have released these claims.

6. HOW DO I RECEIVE A PAYMENT?

All Class Members will receive a payment under this Settlement unless they opt-out. All PAGA Aggrieved Employees will received a payment from the Net PAGA Settlement Amount *regardless* of whether he/she opts out of being a Participating Class Member. If you are a Class Member and you move or change your address, and you want to receive your settlement benefits at your new address, you must send a notice of your change of address to the Settlement Administrator, Simpluris, Inc., [ADDRESS].

7. WHAT ARE THE REASONS FOR THE SETTLEMENT?

Class Counsel and Plaintiffs agreed to enter into the proposed Settlement after weighing the risks and benefits of the Settlement when compared with those of continuing the litigation. The factors that Class Counsel and Plaintiffs considered included the strength of the Class Members' claims, the uncertainty and delay associated with continued litigation, a trial, and appeals, and the uncertainty of particular legal issues yet to be determined, including whether the Class would be certified. Class Counsel and Plaintiffs balanced these and other substantial risks in determining that the proposed Settlement is fair, reasonable, and adequate in light of all circumstances and in the best interest of Class Members.

Although Defendant denies any liability or wrongdoing of any kind, it has agreed to the Settlement in order to avoid risks, costs, and disruption of business associated with protracted litigation.

8. WHAT ARE MY RIGHTS AND OPTIONS?

If you are a Class Member as defined above, you have the following rights and options under the proposed Settlement:

A. **Participate in the Settlement.**

If you take no action, you will be a Participating Class Member, will be represented by Class Counsel, and will have the right to a share of the Net Class Settlement Amount. If the Settlement is approved by the Court, you will be bound by the terms of the Settlement and, as set forth above, will be deemed to have released the Released Claims against Defendant and the other Released Parties. As a Participating Class Member, you will not be charged for the services of Class Counsel.

B. **Exclude yourself from the Settlement by opting out.**

If you are a Class Member but **do not** want to participate in the settlement, you may exclude yourself by opting out. If you choose to opt-out, you will not be eligible to claim a share of the Net Class Settlement Amount. You will be free to pursue any claims you may have against Defendant, including the Released Class Claims, on your own behalf, but Class Counsel will not represent you.

In order to opt-out, you must notify the Settlement Administrator in writing, at the address listed below. In order to be effective, your opt-out must be postmarked or delivered to the Settlement Administrator no later than [45 days from the mailing of the Class Notice, or 15 days after re-mailing, whichever is later], and must be signed, contain your full name, current home (or mailing) address, the last four digits of your Social Security number, and written affirmation of your desire to opt-out containing the following or substantially similar language:

“I elect to opt-out of the *Rodriguez/Ugale v. Allen Distribution, LP*, class action settlement. I understand that by doing so, I will not be able to participate in the settlement and will not receive a share of the settlement proceeds.”

If you do not comply with these procedures, you will lose any opportunity to exclude yourself from the Settlement, will be a Participating Class Member, will be represented by Class Counsel, and will receive a share of the Net Class Settlement Amount. If the Settlement is approved by the Court, you will be bound by the terms of the Settlement and, as set forth above, will be deemed to have released the Released Claims against Defendant and the other Released Parties.

A PAGA Aggrieved Employee who submits a timely Request for Exclusion shall still receive his or her pro rata portion of the Net PAGA Settlement Amount and is covered by the PAGA Release.

C. Object to the terms of the Settlement.

If you believe the proposed Settlement is not fair, reasonable or adequate, you may, but are not required to, object to the Settlement. All objections and supporting papers must be written and shall (a) clearly identify the case name and number (*Rodriguez/Ugale v. Allen Distribution, LP.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2020-0005807); (b) include your full name, address, telephone number, and the last four digits of your Social Security Number; (c) concisely state each objection and the grounds therefore; (d) state whether you would like to appear at the Final Approval Hearing; (e) be mailed to the Claims Administrator, (f) be served in person or through the mail upon Class Counsel and Defendants' Counsel identified below, and (g) filed with the Court, together with proofs of service of all such documents. To be timely, your objection must be postmarked and filed with the Court on or before [45 days following the mailing of the Class Notice or 15 days after re-mailing].

If you have filed a timely and proper objection, you also may, but are not required to, appear and present argument at the Final Approval Hearing. Objections not timely postmarked or delivered to the Settlement Administrator by [45 days after the mailing of the Class Notice or 15 days after re-mailing] will not be considered by the Court. If you file an objection that is not timely, or that does not include the information specified above, you will have no right to appear and present any argument at the final approval hearing.

You may be represented by an attorney at the final approval hearing. Any attorney who will represent an individual Class Member must file a notice of appearance with the Court and serve counsel for all parties on or before [45 days after the mailing of the Class Notice or 15 days after re-mailing]. All objections or other correspondence must state the name and number of the case – *Rodriguez/Ugale v. Allen Distribution, LP.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2020-0005807.

9. WHEN IS THE COURT HEARING AND WHAT IS IT FOR?

The Court will hold the Final Approval Hearing in Department 10D of the main courthouse of the Superior Court of California, County of San Joaquin, located at 180 E. Weber Avenue, Stockton, CA 95202 on _____, 2021 at 9:00 a.m. to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve the fees and costs of the Settlement Administrator, the payment to the State of California, the Class Representative Enhancement Payments, and the fees and costs of Class Counsel. **It is not necessary for you to appear at this hearing to participate in the Settlement.** If you want to be heard orally in support of or opposition to the Settlement, either personally or through counsel, you must comply with the procedures set forth above.

10. HOW CAN I GET MORE INFORMATION?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the Joint Stipulation of Class and Representative Action Settlement and Release. The Settlement, as well as the pleadings and other records in this litigation, including Motion for Preliminary

Approval, Motion for Final Approval, and Motion for Attorneys' Fees, Costs and Service Payment, are available by visiting Court's Public Portal at <https://cms.sjcourts.org/fullcourtweb/start.do> and searching the case by case name or case number. You may also view the Court's Order of Preliminary Approval and, once they are filed, the Motion for Attorneys' Fees, Costs and Service Payment, Motion for Final Approval, and Order Granting Final Approval on the Court's website. The Motion for Attorneys' Fees, Costs and Service Payment and the Motion for Final Approval will be filed on or before **April 19, 2021** and will be available on the Court's website at that time.

If you have questions about the Settlement, you may contact Class Counsel of the Settlement Administrator as follows:

Class Counsel	Claims Administrator
Jenny D. Baysinger, Esq. Robert J. Wasserman, Esq. Mayall Hurley P.C. 2453 Grand Canal Blvd. Stockton, CA 95242 Telephone: (209) 477-3833 Douglas Han, Esq. Shunt Tatavos-Gharajeh, Esq. Justice Law Corporation 751 N. Fair Oaks Avenue, Suite 101 Pasadena, CA 91103 Telephone: (818) 230-7502	Rodriguez/Ugale v. Allen Distribution, LP c/o Simpluris, Inc. ADDRESS CITY, STATE ZIP Telephone: (209) 867-5309

PLEASE DO NOT WRITE OR TELEPHONE THE COURT, DEFENDANTS, OR DEFENDANTS' ATTORNEYS FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

THE COURT HAS APPROVED THIS NOTICE.

EXHIBIT B

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
ARSINÉ GRIGORYAN (SBN 319517)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7502

MAYALL HURLEY P.C.
ROBERT J. WASSERMAN (SBN: 258538)
rwasserman@mayalllaw.com
WILLIAM J. GORHAM (SBN: 151773)
wgorham@mayalllaw.com
JENNY D. BAYSINGER (SBN: 251014)
jbaysinger@mayalllaw.com
2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

JANET UGALE and JOBANY
RODRIGUEZ, individually, and on behalf of
other members of the general public similarly
situated and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act (“PAGA”);

Plaintiffs,

v.

ALLEN DISTRIBUTION, LP, a
Pennsylvania limited partnership; and DOES
1 through 100, inclusive;

Defendants.

Case No.: STK-CV-UOE-2020-0005807

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1182 *et seq.*, 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage

- Statements);
- (7) Violation of Labor Code §§ 218, 233 (Conversion – Failure to Pay Wages);
 - (8) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
 - (9) Violation of California Business & Professions Code §§ 17200, *et seq.*
 - (10) Violation of the Private Attorneys General Act (“PAGA”)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs JANET UGALE and JOBANY RODRIGUEZ (“Plaintiffs”), individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”) and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiffs, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

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4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of San Joaquin. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendants employed Plaintiffs within the State of California, County of San Joaquin.

PARTIES

5. Plaintiff JANET UGALE is an individual residing in the State of California.

6. Plaintiff JOBANY RORDIGUEZ is an individual residing in the State of California.

7. Defendant ALLEN DISTRIBUTION, LP, at all times herein mentioned, was and is, upon information and belief, a Pennsylvania limited partnership, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California.

8. At all relevant times, Defendants ALLEN DISTRIBUTION, LP was the “employer” of Plaintiffs within the meaning of all applicable California laws and statutes.

9. At all times herein relevant, Defendants ALLEN DISTRIBUTION, LP and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

10. The true names and capacities, whether corporate, associate, individual or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that information and belief allege, that each of the Defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused

1 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
2 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
3 capacities when the same have been ascertained.

4 11. Defendants ALLEN DISTRIBUTION, LP and DOES 1 through 100 will hereinafter
5 collectively be referred to as “Defendants.”

6 12. Plaintiffs further allege that Defendants directly or indirectly controlled or affected
7 the working conditions, wages, working hours, and conditions of employment of Plaintiffs
8 and the other class members so as to make each of said Defendants employers and employers
9 liable under the statutory provisions set forth herein.

10 **CLASS ACTION ALLEGATIONS**

11 13. Plaintiffs bring this action on their own behalf and on behalf of all other
12 members of the general public similarly situated, and, thus, seek class certification under Code
13 of Civil Procedure section 382.

14 14. The proposed class is defined as follows:

15 All current and former California-based (*i.e.*, currently “residing” in California
16 with the intent to remain in California indefinitely) hourly-paid or non-exempt
17 employees of Defendants within the State of California at any time during the
18 period from four years preceding the filing of this Complaint to final judgment.

19 15. Plaintiffs reserve the right to establish subclasses as appropriate.

20 16. The class is ascertainable and there is a well-defined community of interest in
21 the litigation:

22 a. Numerosity: The class members are so numerous that joinder of all class
23 members is impracticable. The membership of the entire class is
24 unknown to Plaintiffs at this time; however, the class is estimated to be
25 greater than fifty (50) individuals and the identity of such membership is
26 readily ascertainable by inspection of Defendants’ employment records.

27 b. Typicality: Plaintiffs’ claims are typical of all other class members’
28 claims as demonstrated herein. Plaintiffs will fairly and adequately

1 protect the interests of the other class members with whom they have a
2 well-defined community of interest.

3 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
4 each class member, with whom they have a well-defined community of
5 interest and typicality of claims, as demonstrated herein. Plaintiffs have
6 no interest that is antagonistic to the other class members. Plaintiffs'
7 attorneys, the proposed class counsel, are versed in the rules governing
8 class action discovery, certification, and settlement. Plaintiffs have
9 incurred, and during the pendency of this action will continue to incur,
10 costs and attorneys' fees, that have been, are, and will be necessarily
11 expended for the prosecution of this action for the substantial benefit of
12 each class member.

13 d. Superiority: A class action is superior to other available methods for the
14 fair and efficient adjudication of this litigation because individual joinder
15 of all class members is impractical.

16 e. Public Policy Considerations: Certification of this lawsuit as a class
17 action will advance public policy objectives. Employers of this great
18 state violate employment and labor laws every day. Current employees
19 are often afraid to assert their rights out of fear of direct or indirect
20 retaliation. However, class actions provide the class members who are
21 not named in the complaint anonymity that allows for the vindication of
22 their rights.

23 17. There are common questions of law and fact as to the class members that
24 predominate over questions affecting only individual members. The following common
25 questions of law or fact, among others, exist as to the members of the class:

26 a. Whether Defendants' rounding policy/practice is facially neutral and/or
27 neutral as applied and complies with California law;

28 a. Whether Defendants' failure to pay wages, without abatement or

- 1 reduction, in accordance with the California Labor Code, was willful;
- 2 b. Whether Defendants failed to pay their hourly-paid or non-exempt
- 3 employees within the State of California for all hours worked, missed
- 4 meal periods and rest breaks in violation of California law;
- 5 c. Whether Defendants required Plaintiffs and the other class members to
- 6 work over eight (8) hours per day and/or over forty (40) hours per week
- 7 and failed to pay the legally required overtime compensation to Plaintiffs
- 8 and the other class members;
- 9 d. Whether Defendants properly calculated the regular rate for Plaintiffs
- 10 and the other class members to worked overtime and earned incentive
- 11 pay;
- 12 e. Whether Defendants deprived Plaintiffs and the other class members of
- 13 meal and/or rest periods or required Plaintiffs and the other class
- 14 members to work during meal and/or rest periods without compensation;
- 15 f. Whether Defendants failed to pay minimum wages to Plaintiffs and the
- 16 other class members for all hours worked;
- 17 g. Whether Defendants failed to properly calculate and pay its non-exempt
- 18 California employees' sick pay;
- 19 h. Whether Defendants failed to pay all wages due to Plaintiffs and the other
- 20 class members within the required time upon their discharge or
- 21 resignation;
- 22 i. Whether Defendants failed to timely pay all wages due to Plaintiffs and
- 23 the other class members during their employment;
- 24 j. Whether Defendants complied with wage reporting as required by the
- 25 California Labor Code, including, inter alia, section 226;
- 26 k. Whether Defendants failed to reimburse Plaintiffs and the other class
- 27 members for necessary business-related expenses and costs;
- 28 l. Whether Defendants' conduct was willful or reckless;

- 1 m. Whether Defendants engaged in unfair business practices in violation of
2 California Business & Professions Code section 17200, *et seq.*;
3 n. The appropriate amount of damages, restitution, and/or monetary
4 penalties resulting from Defendants' violation of California law; and
5 o. Whether Plaintiff and the other class members are entitled to
6 compensatory damages pursuant to the California Labor Code.

7 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

8 18. The Private Attorneys General Act ("PAGA"), as set forth at California Labor
9 Code § 2698 *et seq.*, is and at all times relevant herein was applicable to Plaintiff Rodriguez's
10 employment by Defendants.

11 19. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which
12 provides for a civil penalty to be assessed and collected by the Labor and Workforce
13 Development Agency ("LWDA") for violations of the Labor Code may, as an alternative, be
14 recovered through a civil action brought by an aggrieved employee on behalf of himself or
15 herself and other current or former employees pursuant to the procedures outlined in Labor
16 Code § 2699.3. California Labor Code § 2699(a).

17 20. Pursuant to PAGA, an "aggrieved employee" is "any person who was employed
18 by the alleged violator and against whom one or more of the alleged violations was
19 committed." Labor Code § 2699(c).

20 21. Plaintiff Rodriguez was employed by Defendants and the alleged violations were
21 committed against him during his time of employment. Rodriguez is therefore an aggrieved
22 employee as defined by Labor Code § 2699(c). Other current and former employees are also
23 aggrieved employees in that one or more of the alleged violations were also committed against
24 them during their time of employment with Defendants.

25 22. As is outlined herein, Defendants violated the Labor Code as to Plaintiff
26 Rodriguez and other current and former employees it employed and/or employs within
27 California. Specifically, Defendants violated Labor Code sections 201, 202, 203, 204, 226,

28 ///

1 226.7, 233, 246, 510, 512, 1174, 1182.12 et seq., , 1194, 1197, 1198, 2802 and the applicable
2 IWC Wage Orders.

3 23. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA
4 action is that which is provided for by the by the Labor Code. When the Labor Code does not
5 provide a civil penalty, the penalty recoverable shall be \$100 for the initial violation per
6 employee per pay period and \$200 for each subsequent violation per employee per pay period.

7 24. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee
8 may recover the civil penalty on behalf of himself or herself and other current or former
9 employees against whom one or more of the alleged violations was committed. Furthermore,
10 any employee who prevails in any action shall be entitled to an award of reasonable attorney's
11 fees and costs.

12 25. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Plaintiff
13 Rodriguez, may pursue a civil action arising under PAGA after the following requirements
14 have been met:

15 a. The aggrieved employee shall give written notice by certified mail to the
16 LWDA and the employer (hereinafter "Employee's Notice") of the specific provisions
17 of California Labor Code alleged to have been violated, including the facts and theories
18 to support the alleged violations;

19 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the
20 employer and the aggrieved employee by certified mail that it does not intend to
21 investigate the alleged violation within 60 days of the postmark date of the Employee's
22 Notice. Upon receipt of the LWDA's Notice, or if the LWDA does not provide notice
23 with 65 calendar days of the postmark date of the Employee's Notice, the aggrieved
24 employee may commence a civil action pursuant to California Labor Code § 2699 to
25 recover civil penalties in addition to any other penalties to which the employee may be
26 entitled;

27 c. For all alleged violations not enumerated in Labor Code § 2699.5, the
28 employer is given thirty-three (33) days to cure and notify the aggrieved employee by

1 certified mail that the violation has been cured. If the violation is not cured, the
2 aggrieved employee may commence a civil action pursuant to California Labor Code §
3 2699 to recover civil penalties in addition to any other penalties to which the employee
4 may be entitled.

5 26. On June 11, 2020, Plaintiff Rodriguez provided written notice by certified mail
6 and online submission to Defendants and the LWDA, respectively, of the specific provisions
7 of the Labor Code alleged to have been violated, including the facts and theories to support
8 the alleged violations.

9 27. As of the filing of this First Amended Class Action Complaint, which is more
10 65 days after June 11, 2020, the LWDA has not responded to Plaintiff Rodriguez's notification
11 or otherwise indicated an intention to investigate his claims. Plaintiff Rodriguez has satisfied
12 the administrative prerequisites under Labor Code § 2699.3 to bring a civil action to recover
13 penalties against Defendants, in addition to other remedies, for violations of California Labor
14 Code sections 201, 202, 203, 204, 226, 226.7, 233, 246 510, 512, 1174, 1182.12 et seq., 1194,
15 1197, 1198, 2802 and the applicable IWC Wage Orders.

16 28. As of the filing of the Complaint, which was more than thirty-three (33) days
17 after June 11, 2020, Defendants have not furnished any notification reflecting that any of the
18 violations alleged in the June 11, 2020 notification letter have been cured pursuant to
19 California Labor Code section 2699.3, subdivision (c).

20 **GENERAL ALLEGATIONS**

21 29. During the relevant time period set forth herein, Defendants employed Plaintiffs
22 and other persons as hourly-paid or non-exempt employees within the State of California.

23 30. Defendants, jointly and severally, employed Plaintiff Ugale as an hourly-paid
24 employee from in or about January of 2018 to May of 2019 in the State of California, County
25 of San Joaquin.

26 31. Plaintiff Rodriguez was hired by Defendants as a Loader in or around November
27 2019.

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1 32. Defendants had the authority to hire and terminate Plaintiffs and other class
2 members; to set work rules and conditions governing Plaintiffs' and other class members'
3 employment; and to supervise their daily employment activities.

4 33. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs
5 and other class members' employment for them to be joint employers of Plaintiffs and the
6 other class members.

7 34. Defendants directly hired and paid wages and benefits to Plaintiffs and other class
8 members.

9 35. Defendants continue to employ hourly-paid or non-exempt employees within the
10 State of California.

11 36. Plaintiffs and other class members worked over eight (8) hours in a day, and/or
12 forty (40) hours in a week during their employment with Defendants.

13 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants
14 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
15 employees within the State of California. This scheme involved, *inter alia*, failing to pay them
16 for all hours worked, missed meal periods, and missed rest breaks in violation of California
17 law.

18 38. Defendants employed, with regard to Plaintiff and their other non-exempt
19 employees, an impermissible but uniform policy and practice of rounding its employees' time

20 39. Defendants' rounding policy is not neutral, either facially or as applied.

21 40. Defendants' rounding policy favors Defendants and consistently results in
22 underpayment to its non-exempt employees, including Plaintiffs.

23 41. Specifically, Defendants employ a rounding policy that rounds employee clock-in
24 and clock-out times to the nearest ¼ of an hour, but does not round meal period clock-in/clock-
25 out times at all.

26 42. Plaintiffs and Allen's other current and former non-exempt employees within
27 California were expressly required to arrive prior to his/her shift start time and thus routinely
28 clocked in early, though not more than fifteen (15) minutes early.

1 43. During the time Plaintiffs and the other non-exempt Allen employees were clocked
2 in prior to the shift start they were expected to stretch to prepare for the shift and to attend a pre-
3 shift meeting. The pre-shift meeting was almost always held before the shift start time.

4 44. By way of example, if Plaintiffs were scheduled for a 7:00 shift, each was expected
5 to clock in before 6:55 in order to be at the pre-shift meeting by 6:55 and be able to attend that
6 meeting and stretch before 7:00.

7 45. The additional minutes prior to the shift start time that Plaintiffs and other non-
8 exempt employees were under Defendants' control were not compensated. Some of those
9 uncompensated minutes should have been paid at overtime premium rates.

10 46. Similarly, Plaintiffs and Defendants' other current and former non-exempt California
11 employees did not clock-out until after the shift ended (i.e. if a scheduled shift ended at 3:30
12 p.m., Plaintiffs would not be able to clock-out and be released from Defendants' control until
13 between four and seven minutes after the shift end). The time after the official shift end was
14 spent on tasks for Defendants' benefits such as returning forklifts and other equipment, cleaning
15 up, and other tasks. This time also went uncompensated because of Defendants' rounding
16 policy.

17 47. Because of the structure of Plaintiffs' work for Defendants, the rounding system
18 almost always resulted in a net detriment to Plaintiffs and Defendants' other current and former
19 non-exempt California employees.

20 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
21 or should have known that Plaintiffs and other class members were entitled to receive certain
22 wages for overtime compensation and that Plaintiffs and other class members were not
23 receiving wages for overtime compensation.

24 49. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed
25 to provide Plaintiffs and other class members the required rest and meal periods during the
26 relevant time period as required under the Industrial Welfare Commission Wage Orders and
27 thus they are entitled to any and all applicable penalties.

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1 50. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
2 or should have known that Plaintiffs and other class members were entitled to receive all
3 timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
4 the other class members' regular rate of pay when a meal period was missed, late or
5 interrupted, and that Plaintiffs and other class members did not receive all timely and proper
6 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
7 period was missed.

8 51. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
9 or should have known that Plaintiffs and other class members were entitled to receive all
10 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs
11 and the other class members' regular rate of pay when a rest period was missed, late or
12 interrupted, and that Plaintiffs and other class members did not receive all rest periods or
13 payment of one additional hour of pay at their regular rate of pay when a rest period was
14 missed.

15 52. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
16 or should have known that Plaintiffs and other class members were entitled to receive at least
17 minimum wages for compensation and that Plaintiffs and other class members were not
18 receiving at least minimum wages for all hours worked.

19 53. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
20 or should have known that Plaintiffs and other class members were entitled to receive the
21 wages owed to them upon discharge or resignation, including overtime and minimum wages
22 and meal and rest period premiums, and that Plaintiffs and other class members did not, in
23 fact, receive such wages owed to them at the time of their discharge or resignation.

24 54. Plaintiffs are informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiffs and other class members were entitled to receive
26 complete and accurate wage statements in accordance with California law, but, in fact,
27 Plaintiffs and other class members did not receive complete and accurate wage statements

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1 from Defendants. The deficiencies included, *inter alia*, the failure to include the total number
2 of hours worked by Plaintiffs and other class members.

3 55. Plaintiffs are informed and believe, and based thereon allege, that pursuant to its
4 uniform policy and practice, Defendants knew or should have known that commissions, non-
5 discretionary bonuses and other items of compensation (including crisis premium pay) earned
6 by Plaintiffs and the other class members were to be included in Plaintiffs' and Defendants'
7 other non-exempt California employees' regular rate of pay for purposes of sick pay.

8 56. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
9 or should have known that Plaintiff and the other class members were entitled to
10 reimbursement for necessary business-related expenses.

11 57. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
12 or should have known that Defendants had to keep complete and accurate payroll records for
13 Plaintiffs and other class members in accordance with California law, but, in fact, did not keep
14 complete and accurate payroll records for Plaintiffs and other class members.

15 58. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
16 or should have known that they had a duty to compensate Plaintiffs and other class members
17 pursuant to California law, and that Defendants had the financial ability to pay such
18 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
19 represented to Plaintiffs and other class members that they were properly denied wages, all in
20 order to increase Defendants' profits.

21 59. As a pattern and practice, during the relevant time period set forth herein,
22 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
23 worked. Plaintiffs and other class members were required to work more than eight (8) hours
24 per day and/or forty (40) hours per week without overtime compensation.

25 60. As a pattern and practice, during the relevant time period set forth herein,
26 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
27 Plaintiffs and other class members.

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61. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and other class members at least minimum wages for all hours worked.

62. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs' and other class members redeemed sick pay at their regular rate of pay.

63. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and other class members the wages owed to them upon discharge or resignation.

64. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class members.

65. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class members.

66. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to properly compensate Plaintiffs and other class members pursuant to California law in order to increase Defendants' profits.

67. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)

68. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 67, and each and every part thereof with the same force and effect as though fully set forth herein.

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1 69. California Labor Code section 1198 and the applicable Industrial Welfare
2 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
3 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
4 rate of pay, depending on the number of hours worked by the person on a daily or weekly
5 basis.

6 70. Specifically, the applicable IWC Wage Order provides that Defendants are and
7 were required to pay Plaintiffs and other class members employed by Defendants, who
8 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
9 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
10 than forty (40) hours in a workweek.

11 71. The applicable IWC Wage Order further provides that Defendants are and were
12 required to pay Plaintiffs and other class members overtime compensation at a rate of two
13 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

14 72. California Labor Code section 510 codifies the right to overtime compensation
15 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
16 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
17 day of work, and overtime compensation at twice the regular hourly rate for hours worked in
18 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
19 of work.

20 73. During the relevant time period set forth herein, Plaintiffs and other class
21 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in
22 a week.

23 74. As a pattern and practice, during the relevant time period set forth herein,
24 Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs and
25 other class members (but not all).

26 75. Defendants’ pattern and practice of failing to pay Plaintiffs and other class
27 members the unpaid balance of overtime compensation, as required by California laws,

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violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

76. Pursuant to California Labor Code section 1194, Plaintiffs and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)

77. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 76, and each and every part thereof with the same force and effect as though fully set forth herein.

78. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and other class members' employment by Defendants.

79. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

80. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

81. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause, or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the

1 second meal period may be waived by mutual consent of the employer and the employee only
2 if the first meal period was not waived.

3 82. As a pattern and practice, during the relevant time period set forth herein, Plaintiffs
4 and other class members (but not all) who were scheduled to work for a period of time no
5 longer than six (6) hours, and who did not waive their legally-mandated meal periods by
6 mutual consent, were required to work for periods longer than five (5) hours without an
7 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

8 83. As a pattern and practice, during the relevant time period set forth herein, Plaintiffs
9 and other class members (but not all) who were scheduled to work for a period of time no
10 longer than twelve (12) hours, and who did not waive their legally-mandated meal periods by
11 mutual consent, were required to work for periods longer than ten (10) hours without an
12 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

13 84. As a pattern and practice, during the relevant time period set forth herein, Plaintiffs
14 and other class members (but not all) who were scheduled to work for a period of time in
15 excess of six (6) hours were required to work for periods longer than five (5) hours without
16 an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

17 85. As a pattern and practice, during the relevant time period set forth herein, Plaintiffs
18 and other class members (but not all) who were scheduled to work for a period of time in
19 excess of twelve (12) hours were required to work for periods longer than ten (10) hours
20 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
21 period.

22 86. As a pattern and practice, during the relevant time period set forth herein,
23 Defendants intentionally and willfully required Plaintiffs and other class members (but not
24 all) to work during meal periods and failed to compensate Plaintiffs and the other class
25 members (but not all) the full meal period premium for work performed during meal periods.

26 87. As a pattern and practice, during the relevant time period set forth herein,
27 Defendants failed to pay Plaintiffs and other class members (but not all) the full meal period
28 premium due pursuant to California Labor Code section 226.7.

1 88. Defendants' conduct violates applicable IWC Wage Order and California Labor
2 Code sections 226.7 and 512(a).

3 89. Pursuant to the applicable IWC Wage Order and California Labor Code section
4 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one
5 additional hour of pay at the employee's regular rate of compensation for each workday that
6 the meal or rest period is not provided.

7 **THIRD CAUSE OF ACTION**

8 **(Violation of California Labor Code § 226.7)**

9 **(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)**

10 90. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
11 through 89, and each and every part thereof with the same force and effect as though fully set
12 forth herein.

13 91. During the relevant time period set forth herein, the applicable IWC Wage Order
14 and California Labor Code section 226.7 were applicable to Plaintiffs' and other class
15 members' employment by Defendants.

16 92. During the relevant time period set forth herein, California Labor Code section
17 226.7 provides that no employer shall require an employee to work during any rest period
18 mandated by an applicable order of the California IWC.

19 93. During the relevant time period set forth herein, the applicable IWC Wage Order
20 provides that "[e]very employer shall authorize and permit all employees to take rest periods,
21 which insofar as practicable shall be in the middle of each work period" and that the "rest
22 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
23 rest time per four (4) hours or major fraction thereof" unless the total daily work time is less
24 than three and one-half (3 ½) hours.

25 94. As a pattern and practice, during the relevant time period set forth herein,
26 Defendants required Plaintiffs and other class members (but not all) to work four (4) or more
27 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
28 period worked.

1 95. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants willfully required Plaintiffs and other class members (but not all) to work during
3 rest periods and failed to pay Plaintiffs and the other class members the full rest period
4 premium for work performed during rest periods.

5 96. As a pattern and practice, during the relevant time period set forth herein,
6 Defendants failed to pay Plaintiffs and the other class members (but not all) the full rest period
7 premium due pursuant to California Labor Code section 226.7

8 97. Defendants' conduct violates applicable IWC Wage Orders and California Labor
9 Code section 226.7.

10 98. Pursuant to the applicable IWC Wage Orders and California Labor Code section
11 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one
12 additional hour of pay at the employees' regular hourly rate of compensation for each workday
13 that the rest period was not provided.

14 **FOURTH CAUSE OF ACTION**

15 **(Violation of California Labor Code §§ 1182 *et seq.*, 1194 and 1197)**

16 **(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)**

17 99. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
18 through 98 and each and every part thereof with the same force and effect as though fully set
19 forth herein.

20 100. During the relevant time period set forth herein, California Labor Code sections
21 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of
22 a lesser wage than the minimum so fixed, is unlawful.

23 101. As a pattern and practice, during the relevant time period set forth herein,
24 Defendants failed to pay minimum wages to Plaintiffs and other class members (but not all)
25 as required, pursuant to California Labor Code sections 1194 and 1197.

26 102. California Labor Code section 1182.12 establishes the minimum wage for
27 California employees from July 1, 2014, to the present.

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103. Defendants' failure to pay Plaintiffs and other class members the minimum wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

104. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

105. Pursuant to California Labor Code section 1194.2, Plaintiffs and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)

106. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 105, and each and every part thereof with the same force and effect as though fully set forth herein.

107. During the relevant time period set forth herein, California Labor Code sections 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 if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

108. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiffs and other class members (but

not all) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

109. Defendants' pattern and practice of failing to pay Plaintiffs and other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

110. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

111. Plaintiffs and other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)

112. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 111, and each and every part thereof with the same force and effect as though fully set forth herein.

113. During the relevant time period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period

1 and the corresponding number of hours worked at each hourly rate by the employee. The
2 deductions made from payments of wages shall be recorded in ink or other indelible form,
3 properly dated, showing the month, day, and year, and a copy of the statement or a record of
4 the deductions shall be kept on file by the employer for at least three years at the place of
5 employment or at a central location within the State of California.

6 114. As a pattern and practice, Defendants have intentionally and willfully failed to
7 provide Plaintiffs and other class members (but not all) with complete and accurate wage
8 statements. The deficiencies include but are not limited to: Plaintiffs and other class members'
9 inability to determine their total hours worked, gross wages earned, net wages earned, and all
10 applicable hourly rates in effect during the pay period and the corresponding number of hours
11 worked at each hourly rate.

12 115. As a result of Defendants' violation of California Labor Code section 226(a),
13 Plaintiffs and other class members have suffered injury and damage to their statutorily
14 protected rights.

15 116. More specifically, Plaintiffs and other class members have been injured by
16 Defendants' intentional and willful violation of California Labor Code section 226(a) because
17 they were denied both their legal right to receive, and their protected interest in receiving,
18 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

19 117. Plaintiffs and other class members are entitled to recover from Defendants the
20 greater of their actual damages caused by Defendants' failure to comply with California Labor
21 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
22 employee.

23 118. Plaintiffs and other class members are also entitled to injunctive relief to ensure
24 compliance with this section, pursuant to California Labor Code section 226(g).

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1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of Labor Code §§ 218, 233)**

3 **(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)**

4 119. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 118, and each and every part thereof with the same force and effect as though fully
6 set forth herein.

7 120. Labor Code section 246(1) requires that employers pay sick time pay to non-
8 exempt employees at that employee's "regular rate of pay."

9 121. The "regular rate of pay" includes all remuneration for employment paid to the
10 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
11 shift differentials, commissions, non-discretionary bonuses, and the value of meals and
12 lodging. See 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual
13 Section 49.

14 122. During the relevant time period, Defendants failed to include commissions,
15 incentive payments, non-discretionary bonuses, and/or other items of compensation when
16 determining the "regular rate of pay" for Plaintiff and their other non-exempt California
17 employees who redeemed accrued and available sick leave for the reasons outlined in Labor
18 Code section 246.5.

19 123. According to the California Supreme Court, sick pay is a form of wages. *Murphy*
20 *v. Kenneth Cole Productions*, 40 Cal.4th 1094, 1103 (Cal. 2007); see also *Flores v. Dart*
21 *Container Corp.*, 2020 WL 2770073 *3 (E.D. Cal. 2020).

22 124. Labor Code section 233 provides that "any employer who provides sick leave
23 for employees shall permit an employee to use in any calendar year the employee's accrued
24 and available sick leave entitlement, in an amount not less than the sick leave that would be
25 accrued during six months at the employee's then current rate of entitlement, for the reasons
26 specified in subdivision (a) of Section 246.5."

27 125. During the relevant time period, Defendants intentionally and willfully failed to
28 pay Plaintiffs and their other California non-exempt employees their sick pay at the rate of

1 pay required by law. Accordingly, Plaintiff and Defendants' other California non-exempt
2 employees did not receive the full amount of paid sick time wages that they were entitled to
3 receive by law, and were therefore denied the right to use sick leave within the meaning of
4 Labor Code sections 233(a) and (c).

5 126. Any employer who violates Labor Code section 233 is liable to employees for the
6 greater of one day's pay or actual damages, reasonable equitable relief, and reasonable
7 attorneys' fees and costs. Labor Code §233(d), (e).

8 127. Further, Labor Code section 218 acknowledges a general private right of action to
9 recover unpaid wages.

10 128. Wherefore, Plaintiffs and Defendants' other California non-exempt employees
11 have been injured as set forth above and request relief as hereafter provided.

12 **EIGHTH CAUSE OF ACTION**

13 **(Violation of California Labor Code §§ 2800 and 2802)**

14 **(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)**

15 129. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
16 through 128, and each and every part thereof with the same force and effect as though fully
17 set forth herein.

18 130. Pursuant to California Labor Code sections 2800 and 2802, an employer must
19 reimburse its employee for all necessary expenditures incurred by the employee in direct
20 consequence of the discharge of his or her job duties or in direct consequence of his or her
21 obedience to the directions of the employer.

22 131. Defendants have intentionally and willfully failed to reimburse Plaintiffs and other
23 class members (but not all) for all necessary business-related expenses and costs. Plaintiffs and
24 other class members are entitled to recover from Defendants their business-related expenses and
25 costs incurred during the course and scope of their employment, plus interest accrued from the
26 date on which the employee incurred the necessary expenditures at the same rate as judgments
27 in civil actions in the State of California.

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1 **NINTH CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

3 **(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)**

4 132. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 131, and each and every part thereof with the same force and effect as though fully
6 set forth herein.

7 133. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
8 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
9 competitors. Accordingly, Plaintiffs seeks to enforce important rights affecting the public
10 interest within the meaning of Code of Civil Procedure section 1021.5.

11 134. Defendants' activities as alleged herein are violations of California law, and
12 constitute unlawful business acts and practices in violation of California Business &
13 Professions Code section 17200, *et seq.*

14 135. A violation of California Business & Professions Code section 17200, *et seq.*
15 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
16 pattern and practice of requiring Plaintiffs and other class members work overtime hours
17 without paying them proper compensation violate California Labor Code sections 510 and
18 1198. Additionally, Defendants' pattern and practice of requiring Plaintiffs and other class
19 members, to work through their meal and rest periods without paying them proper
20 compensation violate California Labor Code sections 226.7 and 512(a). Moreover,
21 Defendants' pattern and practice of failing to timely pay wages to Plaintiffs and other class
22 members violate California Labor Code sections 201 and 202. Defendants also violated
23 California Labor Code sections 226(a), 233, 246(l), 1194, 1197, 2800 and 2802.

24 136. As a result of the herein described violations of California law, Defendants
25 unlawfully gained an unfair advantage over other businesses.

26 137. Plaintiffs and other class members (but not all) have been personally injured by
27 Defendants' unlawful business acts and practices as alleged herein, including but not
28 necessarily limited to the loss of money and/or property.

138. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

TENTH CAUSE OF ACTION

(Violation of the Private Attorneys General Act ("PAGA"))

(Against ALLEN DISTRIBUTION, LP, and DOES 1 through 100)

139. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 138, and each and every allegation in this Complaint as though fully set forth herein.

140. Plaintiff Rodriguez is an "aggrieved employee" under the PAGA, as he was employed by Defendants during the applicable statutory period, from June 11, 2019 through the present, and suffered one or more of the Labor Code violations outlined herein. As such, Plaintiff Rodriguez seeks to recover, on behalf of and as a proxy for the Labor and Workforce Development Agency (the "LWDA"), the civil penalties provided by the PAGA and reasonable attorneys' fees and costs.

141. Plaintiff Rodriguez seeks to recover the PAGA civil penalties through a representative action permitted by the PAGA and *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969. Class certification of the PAGA claims is not required.

142. Plaintiff Rodriguez seeks to enforce the California Labor Code and related regulations and Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of violations which include, but are not limited to, all of the following: Labor Code sections 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 1174, 1182.12 *et seq.*, 1182.12 *et seq.*, 1194, 1197, 1198, 2802, and the applicable IWC Wage Orders.

143. The civil penalty recoverable by an aggrieved employee in a PAGA action for violations of Labor Code sections 510, or any order of the IWC, is set forth at Labor Code section 558. Labor Code section 558 provides a civil penalty of (1) fifty dollars (\$50) for each underpaid employee for each pay period which the employee was underpaid for any initial

violation and (2) one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation as well as an amount sufficient to recover underpaid wages. Labor Code section 558 further provides that any employer or other person acting on behalf of an employer who fails to pay overtime wages due shall be subject to the penalties set forth therein.

144. The civil penalty recoverable for the failure to provide accurate, itemized wage statements is that outlined in Labor Code section 226.3. *Raines v. Coastal Pac. Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675.

145. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action, when the Labor Code does not provide a civil penalty shall be \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period.

146. As a result of the myriad violations of the Labor Code and applicable IWC Order(s), Plaintiffs seek recovery of civil penalties, attorneys' fees and costs pursuant to the PAGA as set forth below.

DEMAND FOR JURY TRIAL

Plaintiffs, individually, and on behalf of other members of the general public similarly situated and on behalf of aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"), request a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other members of the general public similarly situated and on behalf of aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"), pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as representative of the Class;
3. That counsel for Plaintiffs be appointed as Class Counsel; and

4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs and other class members (but not all);

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs and the other class members (but not all);

11. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the court may deem just and proper.

1 **As to the Third Cause of Action**

2 17. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
4 rest periods to Plaintiffs and the other class members (but not all);

5 18. That the Court make an award to Plaintiffs and the other class members of one (1)
6 hour of pay at each employee's regular rate of compensation for each workday that a rest
7 period was not provided;

8 19. For all actual, consequential, and incidental losses and damages, according to
9 proof;

10 20. For premium wages pursuant to California Labor Code section 226.7(b);

11 21. For pre-judgment interest on any unpaid wages from the date such amounts were
12 due; and

13 22. For such other and further relief as the court may deem just and proper.

14 **As to the Fourth Cause of Action**

15 23. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 1182 *et seq.*, 1194 and 1197 by willfully failing to pay minimum wages
17 to Plaintiffs and the other class members (but not all);

18 24. For general unpaid wages and such general and special damages as may be
19 appropriate;

20 25. For pre-judgment interest on any unpaid compensation from the date such amounts
21 were due;

22 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Labor Code section 1194(a);

24 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

25 28. For such other and further relief as the court may deem just and proper.

26 **As to the Fifth Cause of Action**

27 29. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at

1 the time of termination of the employment of Plaintiffs and other class members (but not all)
2 no longer employed by Defendants;

3 30. For all actual, consequential, and incidental losses and damages, according to
4 proof;

5 31. For statutory wage penalties pursuant to California Labor Code section 203 for the
6 other class members who have left Defendants' employ;

7 32. For pre-judgment interest on any unpaid compensation from the date such amounts
8 were due; and

9 33. For such other and further relief as the court may deem just and proper.

10 **As to the Sixth Cause of Action**

11 34. That the Court declare, adjudge and decree that Defendants violated the record
12 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
13 as to Plaintiffs and other class members (but not all), and willfully failed to provide accurate
14 itemized wage statements thereto;

15 35. For actual, consequential and incidental losses and damages, according to proof;

16 36. For statutory penalties pursuant to California Labor Code section 226(e);

17 37. For injunctive relief to ensure compliance with this section, pursuant to California
18 Labor Code section 226(g); and

19 38. For such other and further relief as the court may deem just and proper.

20 **As to the Seventh Cause of Action**

21 39. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code sections §§ 218, 233 by failing to include commissions, incentive payments, non-
23 discretionary bonuses, and/or other items of compensation when determining the "regular rate
24 of pay" for Plaintiffs and their other non-exempt California employees who redeemed accrued
25 and available sick leave for the reasons outlined in Labor Code section 246.5;

26 40. That this Court award actual, compensatory, special, and general damages as
27 well as restitutionary relief to Plaintiffs and the members of the Class;

28 ///

1 41. That this Court award injunctive relief, including that available under Labor
2 Code §§ 226(h) and 248.5(e), and Business and Professions Code § 17203;

3 42. That this Court award penalties and liquidated damages including, but not
4 limited to, those available under Labor Code §§ 203, 226, and 1194.2;

5 43. That this Court award statutory attorneys' fees and costs, including those
6 available under Labor Code §§ 218.5, 226(e)(1), 226(h), 248.5(e), and 1194, as well as Code
7 of Civil Procedure § 1021.5;

8 44. That this Court award prejudgment and post-judgment interest according to any
9 applicable provision of law or as otherwise permitted by law; and;

10 45. That this Court award such other and further relief as the court deems just and
11 proper.

12 **As to the Eighth Cause of Action**

13 46. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and other class
15 members (but not all) for all necessary business-related expenses as required by California
16 Labor Code sections 2800 and 2802;

17 47. For actual, consequential and incidental losses and damages, according to proof;

18 48. For the imposition of civil penalties and/or statutory penalties;

19 49. For punitive damages and/or exemplary damages according to proof at trial;

20 50. For reasonable attorneys' fees and costs of suit incurred herein; and

21 51. For such other and further relief as the court may deem just and proper.

22 **As to the Ninth Cause of Action**

23 52. That the Court declare, adjudge and decree that Defendants violated California
24 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and
25 other class members all overtime compensation due to them, failing to provide all meal and
26 rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages
27 to Plaintiffs and the other class members, failing to pay Plaintiffs' and other class members'
28 wages timely as required by California Labor Code section 201, 202.

1 53. For restitution of unpaid wages to Plaintiffs and other class members and all pre-
2 judgment interest from the day such amounts were due and payable;

3 54. For the appointment of a receiver to receive, manage and distribute any and all
4 funds disgorged from Defendants and determined to have been wrongfully acquired by
5 Defendants as a result of violation of California Business and Professions Code sections
6 17200, *et seq.*;

7 55. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
8 California Code of Civil Procedure section 1021.5;

9 56. For injunctive relief to ensure compliance with this section, pursuant to California
10 Business and Professions Code sections 17200, *et seq.*; and

11 57. For such other and further relief as the court may deem just and proper.

12 **As to the Tenth Cause of Action**

13 58. For civil penalties available pursuant to Labor Code section 2699(f) and the
14 penalty provisions incorporated therein, including but not limited to sections 226.3, 210, 256,
15 558, 248.5(e) and 1174.5;

16 59. For attorneys' fees and costs pursuant to Labor Code section 2699(g) and
17 218.5;

18 60. For all other and further relief as the Court deems just and proper.

19 Dated: July 8, 2020

JUSTICE LAW CORPORATION

20
21 By: _____

Douglas Han
Shunt Tatavos-Gharajeh
Arsiné Grigoryan

22
23
24 Robert J. Wasserman
William J. Gorham
Jenny D. Baysinger
25 *Attorneys for Plaintiff*
26
27
28

EXHIBIT 2

7 PAY PRACTICES

7.1 Employment Categories

To comply with certain government regulations (both state and federal), jobs at Allen Distribution are categorized by the following definitions:

NON-EXEMPT: Generally, employees in this category are entitled to overtime pay for work in excess of 40 hours in a workweek. Such employees are classified as hourly at Allen Distribution.

EXEMPT: Employees who work in at least one of the four capacities are classified as “salaried” at Allen Distribution and are exempt from the overtime provisions of the FLSA and state laws.

PART-TIME: Employees who are scheduled to work less than 30 hours per week. Part-time employees are not eligible for company sponsored benefits.

TEMPORARY: Employees hired as an interim replacement, to temporarily increase our workforce, or to help cover a specific project. Employees are in the temporary category for a limited time.

7.2 Pay Period & Hours:

Allen Distribution pays wages and salaries in a fair, competitive, and nondiscriminatory manner and in compliance with federal and state laws. A goal of Allen Distribution is to pay employees wages and salaries competitive with those paid for similar work in the areas from which we recruit.

The payroll workweek begins on Saturday at 12:01 A.M. and ends on Friday at 12:00 midnight.

Paychecks & Distribution

1. There are twenty-six (26) biweekly pay periods per year. Payday is every second Thursday (biweekly payroll period), with no wage holdback.
2. If an employee is on vacation, ill, laid off, or has terminated employment, his or her paycheck will be mailed to the employees last known address on file.
3. Another individual can pick up an employee’s paycheck only with written documentation from the employee. The individual picking up the check must provide a photo I.D.

7.3 Breaks and Lunch Periods

Starting and ending times, lunch and break periods may vary based on business need and work schedules and will be explained by the employee’s manager. Hourly employees are to be completely relieved of all job duties while on lunch breaks. Employees are entitled to one unpaid meal period per five hour shift. You may leave the premises during your lunch period; however, you must punch in and out.

Hourly employees may be provided with one 15-minute paid break per four-hour shift taken near the middle of each four-hour period whenever possible. Employees are expected to follow scheduled rest and lunch breaks periods set by their manager and notify their manager if work is preventing them from taking a break.

Employees on rest breaks are not required to clock in and clock out because this time is considered “time worked” and is compensable. No employee may leave the premises while on a company paid break. In some states the law specifically dictates when meal and rest breaks may be taken, and applicable state law will prevail in those situations.

EXHIBIT 3

5.14 Expense Reimbursements

Employees must have their manager's written authorization (requisition/purchase order, etc.) prior to incurring an expense on behalf of Allen Distribution. To be reimbursed for all authorized expenses, employees must submit an expense report/voucher accompanied by receipts and approved by their manager. Submit expense report/voucher each week, as authorized reimbursable expenses are incurred.

If employees are asked to conduct Company business using their personal vehicle, employees will be reimbursed at the published mileage rate. Submit expenses weekly.

EXHIBIT 4

7.4 Overtime

If you are a "non-exempt" employee and you perform overtime work, you will be paid one and one-half (1½) times your regular hourly wage for any time over forty (40) hours per week (including paid holidays, vacation, birthday and funeral).

7.4.1 Overtime Definitions

From time to time, it may be necessary for you to perform overtime work in order to complete a job on time. All overtime must be approved in advance by your manager. When it is necessary to work overtime, you are required to cooperate as a condition of your employment. There are two types of overtime work:

Scheduled Overtime

Scheduled overtime work is announced in advance and generally will involve an entire department or operation. This type of overtime work becomes part of the required workweek of the people who are members of the department or operation. If you would like to be excused from performing scheduled overtime, please speak with your manager.

Non-Scheduled Overtime

One of Allen Distribution's keys to success is the ability to be flexible and responsive to the ever changing needs and requirements of our customers. You may be asked or required to work overtime without notice, although every attempt will be made to seek volunteers and give as much notice possible. If you have a legitimate reason for not being able to work the overtime, please speak with your manager. Lack of participation in non-scheduled overtime will result in disciplinary action.

7.5 Shift Premium

Employees, required to work on a second or third shift operation, will be paid an additional shift differential. Employee must work at least 4 hours during 3:00 p.m. and 7:00 a.m. to qualify for the shift differential. If an employee is called in during the hours of 3:00 p.m. and 7:00 a.m., they will receive shift differential for all hours worked, even if less than four.

7.6 Clocking In and Clocking Out

All employees are expected to clock in just prior to the start of their scheduled start time. Employees may not clock in earlier than 5 minutes before the beginning of their scheduled start time, unless prior authorization by their supervisor is obtained. All employees are expected to clock-in and report to their work area to begin work at the beginning of their shift. If you forget to punch in, your manager must make the correction.

All non-exempt employees must clock out at the end of their shift. Employees are not permitted to clock out more than five (5) minutes past the end of their shift without the prior approval of their manager. Overtime must be authorized by the employee's immediate manager in advance.

Employees who take time off during the work day, above and beyond their normal breaks, to attend to personal matters must clock out when they leave and clock in when they return. Arrangement to be compensated utilizing vacation or personal paid time off should be done in accordance with the Attendance Policy.

Clocking in or out for someone else or allowing someone else to clock in or out for you is consider an alteration of your timecard. Alteration of your own timecard or records or attendance documents; punching or altering another employee's timecard or records, or causing someone to alter your timecard or records is prohibited and considered fraud. Please refer to section 5.

EXHIBIT 5

Jenny Baysinger

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, June 30, 2021 2:27 PM
To: Jenny Baysinger
Subject: Thank you for your Proposed Settlement Submission

06/30/2021 02:27:21 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7Cjaysinger%40mayallaw.com%7C25830a86e9b94932acb208d93c0ddbf%7C05d52ced3a0f41ca99a7a9f9e83f079b%7C0%7C0%7C637606852506559276%7CUnknown%7CTWFPbGZsb3d8eyJWljoimC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C1000&reserved=0