

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

EDWARD SALGADO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

S.R. BRAY LLC, a California limited
liability company d/b/a Power Plus!;
POWER PLUS LLC, a California limited
liability company; and DOES 1 through 100,

Defendants.

Case No.: 30-2020-01172134

*[Case assigned for all purposes to the Hon.
Glenda Sanders, Dept. CX101]*

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 8, 2022
Time: 1:30 p.m.
Dept.: CX101

Action Filed: May 28, 2020
Trial Date: None Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I, Fletcher W. Schmidt, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiff and proposed Class Representative Edward Salgado (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum laude* and was awarded membership in the Order of the Coif. Since graduating from law school, I worked as a law clerk for the law firm of Tredway, Lumsdaine & Doyle, where I was part of the defense team for two class actions, including one wage and hour class action in Los Angeles County Superior Court. From August 2013 to March 2016, I worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in California state and federal court. I am currently responsible for managing a caseload of over thirty (30) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action settlements in which I have been named as Class Counsel, and which have been granted final approval:

- *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468,

California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);

- *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
- *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016);
- *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016);
- *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016);
- *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016);

- 1 • *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior
2 Court, County of San Bernardino, Honorable Donald Alvarez presiding (approving an
3 hourly rate of \$375 for work performed in 2015 and 2016);
- 4 • *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior
5 Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle
6 presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- 7 • *Khosravi v. Enterprise Rent-A-Car Company of Los Angeles, LLC, et al.*, Case No.
8 30-2016-00829923-CU-OE-CXC, Superior Court of California, County of Orange,
9 Honorable Judge Thierry Patrick Colaw presiding (approved at an hourly rate of \$425
10 for work performed in 2016 and 2017);
- 11 • *Nieves v. Ta Chen International, Inc.*, Case No. BC609005, Superior Court of
12 California, County of Los Angeles, Honorable Judge Kenneth R. Freeman presiding
13 (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- 14 • *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-OE-CXC, Superior
15 Court of California, County of Orange, Honorable Judge William Claster presiding
16 (approved at an hourly rate of \$425 for work performed in 2017 and 2018);
- 17 • *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-
18 OE-CXC, Superior Court of California, County of Orange, Honorable William D.
19 Claster presiding (approving an hourly rate of \$425 for work performed in 2016, 2017
20 and 2018);
- 21 • *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-
22 2016-00883282-CU-OE-CXC, Superior Court of California, County of Orange,
23 Honorable Randall J. Sherman presiding (approving an hourly rate of \$425 for work
24 performed in 2016, 2017 and 2018);
- 25 • *Sandra Zinnerman v. Tumbleweed Educational Enterprises, Inc.*, Case No.
26 BC673708, Superior Court of California, County of Los Angeles, Honorable Maren
27 E. Nelson presiding (approving an hourly rate of \$425 for work performed in 2016,
28 2017, and 2018);

- *Tina Arellano v. Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding;
- *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$475 for work performed in 2017, 2018 and 2019);
- *Maria C. Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case No. BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle, presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019);
- *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$595 for work performed in 2018, 2019 and 2020); and
- *Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San Diego County Superior Court, Honorable Timothy Taylor, presiding (approving an hourly rate of \$595 for work performed in 2017-2020).

5. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action as Class Counsel in the following cases:

- *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding (certifying a class of employees who were misclassified as independent contractors);
- *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (certifying a rest period violation class and conditionally certifying a FLSA unpaid overtime wage class);

- 1 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
2 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr. presiding
3 (conditionally certifying an unpaid FLSA overtime wage class);
- 4 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United
5 States District Court, Eastern District of California, Honorable Judge Jennifer L.
6 Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 7 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-
8 CXC, California Superior Court, County of Orange, Honorable Judge William Claster
9 presiding (certifying unpaid overtime wage class and waiting time penalty class);
- 10 • *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-
11 CXC, California Superior Court, County of Orange, Honorable Judge Glenda Sanders
12 presiding (certifying five separate classes for claims for unpaid wages, unreimbursed
13 expenses, failure to authorize and permit rest periods, and derivative claims);
- 14 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx),
15 United States District Court, Central District of California, Honorable Dolly M. Gee
16 presiding (certifying six classes of employees for rest period violations, wage
17 statement violations, meal period violations, and overtime and double-time
18 violations); and
- 19 • *Staublein v. Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San
20 Bernardino Superior Court, Honorable David Cohn presiding (certifying a wage
21 statement class).

22 6. In 2018, 2019, and 2020, Thomson Reuters and Los Angeles Magazine recognized
23 me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super
24 Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys
25 under the age of forty in Southern California each year.

26 7. As counsel for Plaintiff, I have been intimately involved in all aspects of this
27 litigation from its inception and believe that the proposed Settlement is an excellent result for the
28 Class Members.

1 8. Power Plus is one of the nation’s largest providers of innovative temporary power
2 solutions and backup power systems. Plaintiff worked for Power Plus as a non-exempt “Installer”
3 from April 2016 through approximately May 13, 2020.

4 9. Plaintiff alleges that Power Plus failed to pay all overtime wages to Plaintiff and
5 other Class Members by failing to include the value of all non-discretionary remuneration,
6 including on-call payments and annual and quarterly bonuses, into the “regular rate” of pay. Based
7 on Plaintiff’s expert’s analysis and extrapolation of data provided by Power Plus, Plaintiff
8 calculates a total underpayment of approximately \$267,356 in overtime wages. However, in
9 response, Power Plus argues that it properly includes on-call pay and bonus payments in its
10 calculation of the regular rate of pay for the purposes of overtime. Power Plus contends that many
11 of the bonuses were discretionary, including end of the year discretionary holiday bonuses, and
12 thus do not need to be included in the regular rate of pay for overtime purposes. Power Plus further
13 contends that the discretionary holiday bonuses were not tied to employees’ hours worked and
14 therefore do not need to be included in the regular rate. Power Plus further contends it is not
15 required to include quarterly profit-sharing bonuses in employees “regular rate” of pay when
16 calculating overtime compensation, as its profit-sharing plan qualifies as a “bona fide profit
17 sharing plan” under 29 U.S.C. § 207(e)(3)(b). Moreover, Power Plus contends Plaintiff would be
18 unable to certify this claim given the differences and the individualized nature of frequency, type,
19 and amount of bonuses received by class members. Given these potential defenses, Plaintiff
20 discounted Power Plus maximum exposure by 40% for the risk of non-certification and 55% for
21 the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an
22 estimated exposure of \$72,186.

23 10. Plaintiff alleges that prior to October 2019, Power Plus auto-deducted 30 minutes
24 from employees’ time for meal periods, regardless of whether the employee actually took a full
25 30-minute meal period. Plaintiff alleges this resulted in additional unpaid wages, on those
26 occasions employees took less than 30-minute meal periods but had a full 30 minutes auto-
27 deducted. Plaintiff’s expert’s analysis of the data further revealed approximately 220,665 total
28 meal period-eligible shifts prior to October 20, 2019. Thus, Plaintiff estimated Power Plus’ total

1 maximum exposure on this claim as follows: $220,653 * 11\% * 5/60 * 11.66 \text{ min. wage} * 2$
2 (liquidated damages) = \$47,168. Power Plus contends that it has always provided employees with
3 30-minute meal periods, and employees were not underpaid at all as a result of its auto-deduct
4 practice. Power Plus further argues that the auto-deduct practice was instituted for employee
5 convenience, as it allowed employees to take their meal periods without having to worry about
6 clocking out and clocking back in. Power Plus also argues it did not know, and reasonably could
7 not have known, employees were working during meal periods, since Power Plus relieves
8 employees of all duty for 30 minutes. Finally, Power Plus contends this claim would not be
9 amenable to class certification since it would require an employee-by-employee, shift-by-shift
10 analysis as to whether each employee in fact took a full 30-minute meal period on each shift. In
11 light of these defenses, Plaintiff discounted the maximum exposure by 30% for risk of non-
12 certification, and by an additional 30% for risk of losing on the merits, for a realistic estimated
13 exposure of \$23,112.

14 11. Plaintiff alleges that Power Plus failed to provide employees with full,
15 uninterrupted 30-minute meal periods before the end of the fifth hour of work and failed to
16 provide second meal periods when employees worked in excess of 10.0 hours. Additionally, as
17 stated above, prior to October 2019 Power Plus did not require employees to clock out for meal
18 periods and instead relies on an automatic deduction of 30-minutes from hours worked to account
19 for purported meal periods. Plaintiff alleges that this practice is unlawful as it deducts time
20 worked in instances when employees are not provided with a full, uninterrupted 30-minute meal
21 period. Based on Plaintiff's expert's review and extrapolation of employee timekeeping data,
22 Plaintiff estimated approximately 138,825 shifts reflected at least one potential meal period
23 violation (late, short, or missed meal period(s)) and did not have a corresponding meal period
24 premium payment. Further, the data produced by Power Plus reflected an average hourly rate of
25 approximately \$19.71 for Class Members during the Class Period. Plaintiff therefore estimated
26 a maximum total exposure for this claim as: $160,978 * \$19.71 = \$3,172,876$. *Id.* In response,
27 Power Plus contends that it has always provided employees with legally-compliant first and
28 second meal periods and that any meal periods that did not meet that standard were solely the

1 result of employee choice (not Power Plus’s policy/practice). Power Plus further argues that
2 under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure”
3 meal periods are taken, which Power Plus contends it has always done. Power Plus maintains
4 that employees voluntarily waived their second meal period when they worked shifts in excess of
5 10.0 hours (but less than 12.0 hours). Finally, Power Plus contends that Plaintiff’s meal period
6 claim is not suited for class certification as individual inquiries would be required to assess which
7 employees received non-compliant meal periods or missed second meal periods, how many meal
8 periods were non-compliant or missed, and the reasons why a particular individual recorded a
9 non-compliant meal period or missed a meal period on a particular shift. Based on these defenses,
10 Plaintiff discounted the maximal amount by 35% for risk of non-certification, and by an additional
11 40% for risk of losing on the merits or failure to recover the full amount sought, to arrive at a
12 realistic exposure of \$1,443,659.

13 12. Plaintiff alleges that Power Plus failed to authorize and permit third rest periods
14 on shifts over 10 hours for him and other non-exempt employees. Based on Plaintiff’s expert’s
15 review and extrapolation of the timekeeping data, there were approximately shifts of over 10
16 hours during the Class Period. *Id.* Thus, Plaintiff calculated Power Plus’ maximum exposure for
17 the third rest period claim as: 104,689 shifts * \$19.71 premium = \$2,063,420. In response, Power
18 Plus asserts it has always maintained lawful rest period policies and has always authorized and
19 permitted all required rest periods, including third rest periods on shifts over 10 hours. As with
20 meal periods, Power Plus argues, it need not *ensure* rest periods are taken but need only “authorize
21 and permit” them, and it has always done so. Finally, Power Plus argues this claim is not amenable
22 to class treatment, as individualized inquiries would be required to determine whether each
23 employee failed to a third rest periods on each 10+ hour shift, and why they did so. These issues
24 are especially present for rest periods, Power Plus argues, as rest periods need not be recorded.
25 Plaintiff therefore discounted the potential maximum by 50% for risk of non-certification, and an
26 additional 30% for risk of losing on merits or failing to recover the full amount sought, to arrive
27 at a realistic exposure of \$722,197.

28 13. Plaintiff alleges that Power Plus failed to pay all reporting time wages owed as a

1 result of its failure to pay its on-call employees reporting time wages on those occasions when
2 employees were required to work on-call shifts, but were not called in to work or were furnished
3 with less than half of their usual or scheduled day's work. Based on Plaintiff's review of Power
4 Plus' timekeeping data and the estimation that employees were not called into work for
5 approximately 50% of shifts, Plaintiff calculated Power Plus' potential liability for reporting time
6 pay to be \$815,174. In response, Power Plus alleges that it has always paid its employees at least
7 minimum wage for all hours worked and that its on-call payments greatly exceed California's
8 minimum wage. Power Plus further argues that even when employees are working an on-call
9 shift, they are not required to report to work even if they get a call. Power Plus claims that on-
10 call shifts are completely voluntary and employees working an on-call shift have the option of
11 reporting to work when they receive a call or can just pass it on to another employee without
12 consequence. Power Plus argues that because on-call shifts are completely voluntary, the facts
13 are unlike the facts in *Ward* where employees were required to actively telephone their employer
14 or *Dimercurio* where employees were required to be by their phones and actively waiting for a
15 phone call from their employer. Power Plus further argues that because employees did not have
16 to physically report to work, they are not entitled to reporting time pay. Plaintiff therefore
17 discounted the potential maximum by 35% for risk of non-certification, and an additional 50%
18 for risk of losing on merits or failing to recover the full amount sought, to arrive at a realistic
19 exposure of \$264,932.

20 14. With respect to Plaintiff's claim that the wage statements issued by Power Plus
21 failed to list the applicable hourly rates for on-call payments and double time, Plaintiff's expert's
22 analysis reflected that there were approximately 18,489 bi-weekly pay periods within the one-
23 year liability window under Labor Code § 226. In calculating Power Plus' exposure, Plaintiff
24 assumed he could recover the "initial" wage statement penalty of \$50 for each violation, for a
25 total of \$924,450 in potential penalties. However, Power Plus argues that the information can be
26 easily be determined using the information available on the wage statements and simple math (i.e.
27 the amount earned divided by hours worked). Power Plus argues that because an employee is not
28 required to refer to other documents to determine their rate of pay for on call payments and/or

double time pay, Power Plus' wage statements comply with the requirements of Labor Code section 226(a)(9). Moreover, as to Plaintiff's claim that wage statements did not include rates of pay or units for on-call pay, Power Plus argues that on-call payments are not paid based on an employee's number of hours worked, nor are they piece-rate units because they are not based on units of employee production, and therefore no hourly rate of pay or piece-rate unit need be included on wage statements pursuant to Labor Code § 226(a)(3) or (9). Plaintiff therefore, discounted the maximum exposure by 20% for risk of non-certification, and by an additional 35% for risk of being unsuccessful on the merits or failure to recover the full amount sought, for an estimated realistic exposure of \$480,714.

15. As a result of these alleged substantive violations, Plaintiff contends that Power Plus is liable for derivate wage statement violations, waiting time liability for its failure to pay employees all final wages upon their separation of employment, and civil penalties under PAGA, Labor Code section 2698 *et seq.* In response, Power Plus argues that the alleged wage statement violations were not "knowing and intentional," and that Plaintiff could not show he "suffer[ed] injury," as required by Labor Code section 226(e) for imposition of penalties. Power Plus also contends that it possesses strong, good faith defense to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties (which are only available for the "willful" failure to pay wages). Power Plus maintains that not all former employees (if any) experienced an underpayment of wages, thus Plaintiff's exposure analysis is overstated. *Id.* Power Plus also contends that Plaintiff's meal and rest period claims cannot support a claim for waiting time penalties. Additionally, since Plaintiff's PAGA claim is derivative of the underlying wage claims, Power Plus asserts that the PAGA claim will fail with those claims. Power Plus also maintains that given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Power Plus liable for any of Plaintiff's claims.

16. Based on data provided by Power Plus, there are approximately 368 Settlement Class members who have separated their employment with Power Plus since April 6, 2017. Using an estimated average waiting time penalty of \$4,730 ($\$19.17 * 8 \text{ hours} * 30 \text{ days}$), Plaintiff estimated Power Plus's maximum potential waiting time penalty exposure as \$1,740,787 ($368 *$

1 \$4,730). However, as noted above, Power Plus asserts it has strong, good-faith defenses to
2 Plaintiff's underlying claims, and thus, even if Plaintiff were able to recover on his underlying
3 claims, he would not be able to recover derivative waiting time penalties. Power Plus further
4 contends Plaintiff's meal and rest period claims cannot support a claim for waiting time penalties,
5 as multiple courts have held. Moreover, because the waiting time claim is derivative of Plaintiff's
6 underlying wage claims, Plaintiff would need to overcome Power Plus' defenses, both as to class
7 certification and the merits, to his underlying claims. And, Power Plus argues, not every former
8 employee suffered every single alleged wrong, and therefore if Plaintiff only certified or prevailed
9 on some but not all of his claims, the size of any potential waiting time claim would be reduced.
10 Based on these defenses, Plaintiff discounted Power Plus's maximum exposure by 40% for risk
11 of non-certification and by an additional 45% for risk of being unsuccessful on the merits or
12 failure to recover the full amount sought, to arrive at an estimated realistic exposure of \$574,460.

13 17. Plaintiff estimated a maximum PAGA exposure of \$1,848,900, based on 18,489
14 pay periods during the PAGA Period at the \$100 "initial" violation rate under Lab. Code §
15 2699(f). However, these penalties derive from Plaintiff's underlying claims, each of which Power
16 Plus vigorously disputes. Power Plus further argues Plaintiff would not be able to show a violation
17 in *every* pay period, and thus his damages estimate is inflated. The PAGA also grants courts
18 discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Power Plus argues the
19 Court would reduce penalties significantly given its good-faith defenses, as well as its financial
20 condition. Thus, Plaintiff discounted the maximum figure by 45% for risk of losing on the merits,
21 and by an additional 30% for risk of the Court reducing penalties, to arrive at an estimated
22 exposure of \$711,827.

23 18. Using these estimated figures for each of the claims described above, Plaintiff
24 predicts that a possible recovery for the Settlement Class would be approximately \$4,293,087.
25 The proposed recovery to the Settlement Class of \$3,750,000 represents approximately 87.3% of
26 Plaintiff's projected potential recovery, while avoiding the further expense and serious risk of
27 proceeding towards class certification and trial, including the risk that Power Plus would engage
28 in a *Pick-up Stix* campaign to significantly reduce the size of the putative class.

1 19. Although, the Parties agreed to refrain from engaging in formal written and
2 deposition discovery until after exhausting their settlement efforts at mediation, in connection
3 with mediation, Power Plus informally produced timekeeping and payroll data for the entire
4 putative class. Power Plus also provided relevant policies and procedures in effect during the
5 Class Period along with other relevant data necessary to perform a class-wide exposure analysis.
6 Plaintiff, with the help of his retained expert, conducted an analysis of this data and created a
7 comprehensive damages model to calculate the likely exposure that Power Plus faced on each
8 claim.

9 20. On July 13, 2021, the Parties participated in a mediation with Francis “Tripper”
10 Ortman, Esq., a highly respected wage and hour class action mediator. During mediation, the
11 Parties exchanged divergent views on Power Plus’s liability and exposure valuations, their legal
12 positions, and the likelihood of certification of Plaintiff’s claims. With the help of Mr. Ortman,
13 the Parties reached a class-wide resolution at the conclusion of the mediation. A true and correct
14 copy of the Stipulation of Settlement (“Settlement Agreement”) is attached hereto as **Exhibit A**.
15 A true and correct copy of the proposed Notice Packet (which is comprised of the Notice of Class
16 Action Settlement (“Class Notice”), Notice of Settlement Award (“Dispute Form”), and Opt-Out
17 Request Form are attached to the Settlement Agreement as **Exhibits 1A-1C** to the Settlement
18 Agreement.

19 21. Power Plus’ records indicate that there are approximately 615 total Class Members
20 who worked a combined 65,000 workweeks during the Class Period. Based on the allocations of
21 the Net Settlement Amount, participating employees will receive, on average, a payment of
22 approximately \$3,799.95, with the highest individual payment estimated to be \$9,958 and the
23 lowest payment estimated to be \$35.95. Excluded from the Class Members are certain electricians
24 and union laborers who were only temporarily employed by Power Plus for brief periods of time,
25 and who worked under entirely dissimilar conditions and policies as the other non-exempt
26 employees and are therefore not similarly situated for purposes of this lawsuit.

27 22. As part of the Settlement, Plaintiff will apply for a service award at the time of
28 seeking final approval of the Settlement in the total amount of \$5,000.00 for his service to the

1 Class Members and his general release of all claims (known or unknown) against Power Plus.
2 Plaintiff's requested service award is intended to recognize the significant benefits conferred upon
3 the Settlement Class due to the time and effort that Plaintiff expended on behalf of the Settlement
4 Class, including providing factual information and documents to his attorneys, identifying
5 potential witnesses, and participating in in-person and telephonic meetings with his attorneys to
6 discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff
7 undertook by agreeing to serve as the named plaintiff in this case, as well as the fact that Plaintiff
8 agreed to a general release of all claims subject to a waiver of California Civil Code section 1542.

9 23. My firm will also apply for an attorneys' fee award of \$1,250,000.00 (one-third of
10 the GSA), and up to \$50,000.00 in verified costs. Plaintiff submits that the requested fee is fair
11 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
12 purely contingent fee basis. Class Counsel incurred substantial attorneys' fees conducting pre-
13 filing investigation, analyzing Plaintiff's claims, conducting legal research and analysis,
14 reviewing documents and data produced by Power Plus, building a comprehensive damages
15 model, preparing for and attending mediation, negotiating and preparing the long-form Settlement
16 Agreement, preparing this motion for preliminary approval, and otherwise litigating the case. My
17 firm will also expend future attorney time in attending the hearing on this Motion, overseeing the
18 Notice process, drafting the Final Approval Motion and supporting documents, and attending the
19 Final Approval hearing, among other tasks, such as fielding questions from Settlement Class
20 members.

21 24. I have confirmed that neither Plaintiff, Plaintiff's counsel, Defendant, nor
22 Defendant's counsel have any interest, relationship, or involvement with the proposed *cy pres*
23 recipient, Brave Global.

24 25. There is a co-counsel agreement in this case with a fee split of 77.5% to Haines
25 Law Group and 22.5% to Michael Burgis & Associates, P.C. This was consented to by Plaintiff
26 at the time of my firm's retention.

27 26. Concurrently with the filing of this motion, Plaintiff provided notice of the
28 proposed Settlement to the LWDA. Attached hereto as **Exhibit B** are true and correct copies of

1 Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

2 I declare under penalty of perjury under the laws of California and the United States that
3 the foregoing is true and correct. Executed on March 17, 2022, at El Segundo, California.

4 
5 _____
6 Fletcher W. Schmidt
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

CLASS ACTION SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (the “Agreement”) is made and entered into by Plaintiff, Edward Salgado (“Plaintiff”), individually and as a representative of the Class, as defined below, on the one hand, and Defendant, S.R. Bray LLC dba PowerPlus! (“Defendant”), on the other hand. This Agreement is subject to the approval of the Court pursuant to California Rules of Court, Rule 3.769, and is made for the sole purpose of consummating settlement of this Action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Settlement or the conditions precedent are not met for any reason, this Agreement shall be null and void and shall be of no force or effect whatsoever.

I. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definitions section.

1. **Action.** The “Action” shall mean the action styled as a “class action” filed on May 28, 2020, Case No. 20STCV20349 in the Los Angeles Superior Court (“LASC”), later amended as the First Amended Class and Representative Action Complaint (the “FAC”) and further amended as the Second Amended Class and Representative Action Complaint (the “SAC”). On November 17, 2020, pursuant to a stipulation between the parties, the LASC transferred the pending action to the Orange County Superior Court (the “OCSC”). It now bears Case No. 30-2020-01172134-CU-OE-CXC.

2. **Class.** “Class” shall mean all current and former non-exempt employees, excluding all electricians and union members who were temporarily employed by Defendant, who worked for Defendant in California during the Class Period.

3. **Class Counsel.** “Class Counsel” shall mean Paul K. Haines, Fletcher W. Schmidt, and Alexandra R. McIntosh, of Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245.

4. **Class Member(s).** “Class Member(s)” shall mean any person who is a member of the Class, or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir or successor-in-interest.

5. **Class Notice.** “Class Notice” shall mean the Notice of Pendency of Class Action and Proposed Settlement in the form of **Exhibit 1A** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members as part of the Notice Packet.

6. **Class Participants.** “Class Participants” shall mean any and all Class Members who do not timely opt-out as provided herein.

7. **Class Period.** “Class Period” shall mean the period from April 6, 2016 through and including July 31, 2021.

8. **Common Fund.** “Common Fund” shall mean the common fund of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000) which shall comprise the entire amount of the Gross Settlement Amount to be paid by Defendant and which shall be created for payment of all claims, payment of settlement administration, attorneys’ fees, attorneys’ expenses, Service Award, and PAGA Penalty. This amount shall be deposited by Defendant with the Settlement Administrator in accordance with this Agreement.

9. **Complaint.** “Complaint” shall mean the putative class action complaint filed on May 28, 2020 in the Action.

10. **Court.** “Court” shall mean the Superior Court of the State of California, in and for the County of Orange, Complex Civil Division.

11. **Defendant.** “Defendant” shall mean S. R. Bray LLC dba PowerPlus!

12. **Defense Counsel** “Defense Counsel” shall mean H. Daniel Fuller, Cecilia A. Perkins, of Cadden & Fuller, LLP, 114 Pacifica, Suite 450, Irvine, CA 92618.

13. **Effective Date.** “Effective Date” shall be the date when all of the following events have occurred: (a) this Agreement has been executed by the Parties to the Action and approved by Class Counsel and Defense Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Class Members providing them with an opportunity to opt-out of the Settlement; (d) the Court has held a Final Approval Hearing and entered a Final Order and Judgment Approving the Settlement pursuant to this Agreement (the “**Final Judgment**”); and (e) in the event there are written objections timely filed prior to the Final Approval Hearing that are not later withdrawn, the later of the following events: (i) when the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; (ii) any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (iii) any appeal, writ, or other appellate proceeding has upheld the Court’s Final Judgment with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court’s order approving the Settlement is completely final and there is no further recourse by an appellant or objector who seeks to contest the Settlement. In the event that no objections are filed, the Effective Date shall be after steps (a) through (d) have been completed.

14. **Final Approval Hearing.** “Final Approval Hearing” shall mean a hearing held by the Court for the purpose of determining the fairness, adequacy, and reasonableness of the Settlement which, if approved by the Court, shall constitute “**Final Approval**” of the terms and conditions of the Settlement as set

forth in this Agreement.

15. First Amended Complaint (“FAC”). On August 7, 2020, Plaintiff filed a First Amended Class and Representative Action Complaint (the “FAC”) in the LASC.

16. Gross Settlement Amount. “Gross Settlement Amount” shall be Three Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$3,750,000.00) which amount shall be paid by Defendant in full settlement of the Action and will constitute the entire funding source for the Common Fund.

17. Individual Settlement Payment. “Individual Settlement Payment” shall mean the amount which is ultimately paid to each Class Participant.

18. Named Plaintiff. “Named Plaintiff” shall mean Plaintiff Edward Salgado in his individual capacity and as Class representative.

19. Net Settlement Amount. “Net Settlement Amount” shall mean the net amount available for payment of claims from the Common Fund to Class Participants after deducting therefrom the Settlement Administration Expenses, attorneys’ fees, attorneys’ expenses, the LWDA (California “Labor and Workforce Development Agency”) share of the PAGA Payment, and the Service Award.

20. Notice Packet. The “Notice Packet” shall be mailed to Class Members by the Settlement Administrator and shall comprise the Class Notice, the Notice of Individual Settlement, and the Opt-Out Request.

21. Opt-Out(s). “Opt-Out(s)” shall mean any and all persons who timely and validly request exclusion from the Class pursuant to the terms of the Class Notice.

22. Opt-Out Request. “Opt-Out Request” shall mean a timely and valid written request for exclusion from the Class as provided in the Class Notice and in the form of Exhibit 1C.

23. PAGA Aggrieved Employees. All current and former non-exempt employees, excluding all electricians and union members who were temporarily employed by Defendant, who worked for Defendant in California during the period

June 1, 2019 through and including July 31, 2021.

24. PAGA Penalty(ies). “PAGA Penalty” shall mean a payment equal to \$100,000 of which 75% shall be paid to the LWDA and 25% to the Class Members.

25. PAGA Payment. “PAGA Payment” shall mean a total of \$25,000 to be paid collectively to the Class Members.

26. PAGA Period. “PAGA Period” shall mean the period June 1, 2019 through and including July 31, 2021.

27. Parties. “Parties” shall mean the Named Plaintiff and Defendant.

28. Preliminary Approval Date. “Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Agreement.

29. Preliminary Approval Hearing. “Preliminary Approval Hearing” shall mean the hearing held on the motion for preliminary approval of the Agreement in settlement of the Action.

30. Released Claims. “Released Claims” shall have the meaning described in Section X, paragraph 4 hereof.

31. Released Parties. “Released Parties” shall mean Defendant and its present and former parent companies, subsidiaries, divisions, affiliates, joint ventures, and each of their respective present and former officers, directors, shareholders, owners, managers, members, agents, employees, attorneys, representatives, predecessors, successors and assigns.

32. Second Amended Complaint. On February 16, 2022 Plaintiff filed a Second Amended Class and Representative Action Complaint (the “SAC”) in the OCSC. The SAC is the operative complaint in the Action.

33. Service Award. “Service Award” shall mean a payment in the amount of \$5,000 to the Named Plaintiff.

34. Settlement. “Settlement” shall mean the class action settlement embodied in this Agreement, which is subject to Court approval.

35. Settlement Administrator. The “Settlement Administrator” shall be Simpluris, Inc. The Settlement Administrator specializes in class action notification and settlement administration, including telephone support and web-based support, direct mail services, claims processing, and settlement fund distribution. The Settlement Administrator shall be responsible for administering the terms of this Agreement and related matters.

36. Settlement Administration Expenses. “Settlement Administration Expenses” are those costs and expenses reasonably incurred by the Settlement Administrator in the performance of its duties as provided herein.

II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION

1. Named Plaintiff’s Claims. On May 28, 2020, Plaintiff filed the Complaint in the Action. Later, on August 7, 2020 Plaintiff filed the FAC and on February 16, 2022, Plaintiff filed the operative SAC.

2. Discovery, Investigation and Research. Class Counsel have conducted informal discovery and investigation during the pendency of the Action. The Parties have engaged in sufficient investigation and informal discovery to assess the relative merits of the claims of the Named Plaintiff and of Defendant’s defenses thereto.

3. Allegations of the Class Representatives and Benefits of Settlement. This Settlement was reached with the assistance of an experienced and well-known class action mediator, Mr. Tripper Ortman, after arm’s-length bargaining by the Parties commencing on July 13, 2021 where counsel for the Parties were in constant communication by Zoom with Mr. Ortman as they attempted to reach a resolution. The informal discovery conducted in the Action and the information exchanged by the Parties are sufficient to reliably assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis.

The Named Plaintiff and Class Counsel believe that the claims, causes of action, allegations and contentions asserted in the Action have merit. However, the Named Plaintiff and Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel is mindful of the inherent problems of proof under, and possible defenses to, the claims alleged in the Action. Class Counsel has taken into account the uncertain outcome and the risk of any litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation, the potential difficulty of maintaining the Action as a class action, and the potential difficulty in collecting any damages from Defendant that may be awarded in a judgment. Class Counsel believes that the Settlement set forth in this Agreement confers substantial benefits upon the Named Plaintiff and each of the Class Members and that an independent review of this Agreement by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel have determined that the Settlement set forth in this Agreement is in the best interests of the Named Plaintiff and the Class Members.

4. Defendant's Denials of Wrongdoing and Liability. Defendant has denied and continues to deny each and all of the claims and contentions alleged by the Named Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendant contends that it complied in good faith with California wage and hour laws, including, but not limited to, calculating and paying overtime, payment of the minimum wage and dealing legally and fairly with Named Plaintiff and Class Members. Defendant further denies that, for any purpose other than settling this Action, these claims are appropriate for class or representative treatment.

Nonetheless, Defendant has concluded that further conduct of the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Agreement.

5. **Intent of the Settlement.** The Settlement set forth herein intends to achieve the following (a) entry of an order approving the Settlement and granting the monetary and other relief set forth in this Agreement to the Class Members; (b) entry of judgment; and (c) discharge of the Released Parties from liability for any and all of the Released Claims.

III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL AND NAMED PLAINTIFF AS CLASS REPRESENTATIVE

1. **The Settlement Class.** For the purposes of this Agreement and the Settlement of the Action only, the Parties stipulate to conditional class certification of the Class pursuant to California Rules of Court, Rule 3.769(d).

2. **Appointment of Class Counsel.** For purposes of this Agreement and subject to the Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the Class and the effectuation of the Settlement pursuant to this Agreement.

3. **Appointment of Class Representative.** For purposes of this Agreement and subject to the Court's approval, the Parties hereby stipulate to the appointment of the Named Plaintiff as class representative for the Class.

IV. **SETTLEMENT CONSIDERATION**

1. **Gross Settlement Amount.** The Gross Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (a) the Released Claims; (b) Class Counsel's claims for attorneys' fees and expenses; (c) the Settlement Administration Expenses; (d) the Service Award to Named Plaintiff; (e) the PAGA Penalty; and (f) any other obligation of Defendant under this Agreement.

2. **Common Fund.** A Common Fund for the Gross Settlement Amount shall be created for payment of all claims, payment of Settlement Administration Expenses, attorneys' fees, attorneys' expenses, Service Awards, and the PAGA Penalty. All funds received by the Settlement Administrator as provided herein shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to Court order. The Common Fund shall be all-in with no reversion to Defendant.

3. **Payroll Taxes.** Class Participants shall be responsible for their share of the payroll taxes, which shall be deducted from their Individual Settlement Payment. Defendant is responsible for payment of the employer share of payroll taxes which shall be paid separately and in addition to the Gross Settlement Amount.

4. **Escalator Clause.** Defendant has represented that there are an estimated 65,000 total workweeks worked by Class Members during the period from April 6, 2016 through and including June 30, 2021. If the number of workweeks worked during this period exceeds this figure by more than fifteen

percent (15%) (i.e., if there are more than 74,750 total workweeks), Defendant shall increase the Gross Settlement Amount on a proportional basis (i.e., if there were a twenty one percent (21%) increase in the number of total workweeks, Defendant shall increase the Gross Settlement Amount by twenty one percent (21%).

5. Attorneys' Fees and Expenses of Class Counsel. As part of the motion for final approval of the Settlement, Class Counsel may submit an application for an award of attorneys' fees of up to one-third of the Common Fund, (currently estimated at One Million Two Hundred Fifty Thousand Dollars and No Cents (\$1,250,000.00)). Class Counsel may also submit an application for an award of verified costs and expenses recoverable from the Common Fund as per counsel's billing statement in an amount not to exceed Fifty Thousand Dollars and No Cents (\$50,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, neither Class Counsel nor Named Plaintiff shall have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding. Defendant agrees not to object to any such fee, cost, or expense application in those amounts. As a condition of this Settlement, Class Counsel have agreed to pursue their fees only in the manner reflected in this Section. Any fees and costs awarded by the Court shall be paid to Class Counsel from the Common Fund and shall not constitute payment to any Class Members. Any amount awarded to Class Counsel by the Court from the Common Fund shall be in full payment of their attorneys' fees and expenses, and, except as provided above, neither the Named Plaintiff nor Class Counsel shall be entitled to any further award of attorneys' fees or expenses from Defendant.

6. The Settlement Administration Expenses. All costs and expenses due the Settlement Administrator in connection with its administration of the Settlement, including, but not limited to, providing the Notice Packet, locating Class Members, processing Opt-Out Requests, and administering and distributing various

payments, including settlement payments to the Class Participants and PAGA Payments to Class Members, shall not exceed Eight Thousand Five Hundred Dollars (\$8,500) and shall be paid from the Common Fund to the Settlement Administrator.

7. **Service Award.** The Named Plaintiff may receive a Service Award, subject to Court approval, in an amount of Five Thousand Dollars and No Cents (\$5,000) for his efforts on behalf of the Class in the Action. These efforts include identifying the Claims made in the Action, seeking counsel with regard to those Claims, assisting in investigation of the Claims, consulting with Class Counsel, and exposing himself to a substantial potential for an award of costs and attorneys' fees to Defendant in the event that Defendant were to prevail. Defendant shall not oppose any request by Named Plaintiff for a Service Award as described herein, provided that Named Plaintiff executes this Agreement. Any Service Award approved by the Court shall be paid to the Named Plaintiff from the Common Fund and shall be in addition to any distribution to which he may otherwise be entitled as a Class Member. Such Service Award shall not be considered wages, and Defendant shall issue Named Plaintiff an IRS Form 1099 reflecting such payment. Named Plaintiff shall be responsible for the payment of any and all taxes with respect to his Service Award and shall hold Defendant harmless from any and all liability with regard thereto.

8. **PAGA Payment.** One Hundred Thousand Dollars and No Cents (\$100,000) of the Common Fund has been set aside by the Parties as the PAGA Penalty. Pursuant to Labor Code § 2699 (i) 75% of such penalties, or Seventy-Five Thousand Dollars and Zero Cents (\$75,000), will be payable to the California Labor & Workforce Development Agency ("LWDA") and (ii) the remaining 25%, or Twenty-Five Thousand Dollars and No Cents (\$25,000) will be payable to the Class Members as the "PAGA Payment".

V. **MOTIONS FOR COURT APPROVAL**

1. **Preliminary Approval.** Within a reasonable time after execution of

this Agreement by the Parties, Plaintiff shall move the Court for the entry of an Order:

- (a) Conditionally certifying the Class for settlement purposes only;
- (b) Appointing Paul K. Haines, Fletcher W. Schmidt, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
- (c) Appointing Plaintiff Edward Salgado as Class representative for the Class;
- (d) Approving Simpluris, Inc. as Settlement Administrator;
- (e) Preliminarily approving this Agreement and its terms as fair, reasonable, and adequate;
- (f) Approving the form and content of the “Notice Packet” (which is comprised of the Class Notice (Exhibit 1A), the Notice of Individual Settlement Payment (Exhibit 1B), and the Opt-Out Request Form (Exhibit 1C), and directing the mailing of same; and
- (g) Scheduling a Final Approval Hearing.

The Court’s preliminary approval of the Settlement shall be embodied in an Order substantially in the form attached hereto as **Exhibit 2**.

2. Final Approval. The Final Approval Hearing shall be held before the Court following the Preliminary Approval Date and as soon after the Opt-Out Deadline as the matter practicably can be heard. At the Final Approval Hearing, Plaintiff and Defendant shall jointly request the Court to: (i) enter the final order certifying the Class for settlement purposes only; (ii) approve the Settlement as being fair to the Class Members within the meaning of California Rules of Court, Rule 3.769(g), including the release of all Released Claims; and (iii) enter Final Judgment in the

Action consistent with the terms of this Settlement. The Court's final approval of the Settlement shall be embodied in an order substantially in the form attached hereto as **Exhibit 3**. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

3. Entry of Final Judgment. Final Judgment shall be entered pursuant to California Rules of Court, Rule 3.769(h) as part of the consideration for the Settlement.

VI. FUNDING OF SETTLEMENT COMMON FUND

1. Deposit by Defendant: Within thirty (30) days after the Effective Date, Defendant shall pay or cause to be paid the amount of \$3,750,000 (the Gross Settlement Amount) (which shall comprise the Common Fund) to the Settlement Administrator to be disbursed in accordance with the provisions of this Agreement.

VII. SETTLEMENT ADMINISTRATION AND NOTICE TO CLASS MEMBERS

1. The Settlement Administrator's Responsibilities. The Settlement Administrator shall be responsible for mailing the Notice Packet to Class Members, and handling inquiries from Class Members concerning the Notice Packet. On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense Counsel updating them as to the number of valid timely received Opt-Out Requests as well as any disputes or objections submitted by Class Members. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt-Out Requests, objections, and any withdrawals of objections no later than seven (7) days after their receipt.

No later than twenty-eight (28) days before the Final Approval Hearing, or as soon thereafter as practicable, the Settlement Administrator will provide Class

Counsel with a declaration of due diligence and proof of mailing of the Notice Packet, and receipt of any Opt-Out Requests by the “Opt-Out Deadline” (defined in paragraph 3 below). Within fourteen (14) days after the Opt-Out Deadline, or as soon thereafter as practicable, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a final report with information regarding the final pro rata portion of each Class Participant and the final number of Opt-Outs.

2. Notice to Class Members. The Notice Packet shall be provided to Class Members in the following manner. Within fifteen (15) days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator and Class Counsel with a list of Class Members containing the Class Members’ names, Social Security numbers, last-known addresses and telephone numbers, and starting and ending dates of employment. The list shall be marked “Confidential -- Attorneys’ and Claims Administrator’s Eyes Only.”

Class Counsel represents, warrants, covenants and agrees that: (a) Class Counsel shall hold the list containing Class Members’ personal information, including any copies thereof, in the strictest confidence and shall not disclose or divulge its contents to any Class Member, including the Named Plaintiff, or to any third party; (b) the list shall be kept in secure facilities; and (c) the contents of the list shall be used exclusively for administration of the Settlement pursuant to this Agreement and for no other purpose, including, but not limited to, fact-gathering, discovery, or any other purpose.

Within 10 business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class

member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Opt-Out Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within 5 business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen 14 calendar days after the Response Deadline to opt-out, object, or dispute their Individual Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.

3. Opt-Out. Class Members shall have sixty (60) days from the date the Class Notice is first mailed (the “Opt-Out Deadline”) in which to exclude themselves from the Settlement by mailing the Opt-Out Request, return receipt requested, (and not by telephone, e-mail or fax) to the Settlement Administrator (not the Court). To be valid, the completed Opt-Out Request must clearly state that the Class Member wishes to be excluded from the Action and shall include the Class Member’s full name, address, the dates when the Class Member was employed by Defendant, signature and date. The date of delivery of the Opt-Out Request is deemed to be the date the Opt-Out Request is deposited in the U.S. mail, postage

prepaid, as evidenced by the postmark. Neither the Parties nor their counsel shall encourage any Class Member to opt out of the Settlement. In the event three or more percent (3%) of the Class Members opt-out from or object to the Settlement, Defendant shall have the right to void the Settlement.

4. Objections. The Notice Packet shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement may mail a written objection to the Settlement Administrator no later than sixty (60) days from the date the Notice Packet is first mailed (the “Objection Deadline”). Class Counsel shall be obligated to file any written objections with the Court prior to the Final Approval Hearing. To be valid, the objection shall also include the Class Member’s (1) full name, address and signature; (2) information identifying the person as a Class Member; (3) the reasons why the Class Member objects to the Settlement, accompanied by any legal support for the objection; (4) the name and address of any attorney representing the Class Member; and (5) a statement saying whether the Class Member plans to personally appear at the Final Approval Hearing. The date of delivery of the written objection is deemed to be the date the objection is deposited in the U.S. mail, postage prepaid, as evidenced by the postmark. The objection must include the case name and number and must set forth, in clear and concise terms a statement of the reasons why the objector believes that the Court should find that the proposed Settlement is not in the best interest of the Class and the reasons why the Settlement should not be approved, including the legal and factual arguments supporting the objection. Class Members may also appear at the Final Approval Hearing, in person or through an attorney, to voice objections to the Settlement.

5. Claims. Class Participants shall be eligible to receive their share of the Net Settlement Amount so long as they do not submit an Opt-Out Request.

VIII. SETTLEMENT DISTRIBUTION

1. **Allocation of the Net Settlement Amount.** The claims of all Class Members are to be settled from the Net Settlement Amount following the payment of the Settlement Administration Expenses, attorneys' fees, attorneys' expenses, Service Awards, and PAGA Payment. Any reduction by the Court of the amounts designated in this Agreement for payment of the items listed above in this paragraph from the Gross Settlement Amount will revert to the Net Settlement Amount for distribution to the Class Participants.

2. **Payments from the Net Settlement Amount.** From the Net Settlement Amount, (the amount remaining after the payments referenced in paragraph 1 above have been made) the Settlement Administrator will calculate each Class Participant's Individual Settlement Payment based on the following formula:

- (a) **Wage Statement Amount:** Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each Class Participant who was employed by Defendant at any time during the time period of April 6, 2019 through July 31, 2021, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (b) **Waiting Time Amount.** Ten percent (10%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each Class Participant who separated their employment from Defendant during the period of April 6, 2017 through July 31, 2021.
- (c) **Remaining Balance.** The remainder of the Net Settlement

Amount will be distributed to each Class Participant based on their proportionate number of workweeks worked during the Class Period as provided by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Class Participant's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all Class Participants during the Class Period.

3. PAGA Payment. In addition to the payments to Class Participants from the Net Settlement Amount, twenty five percent (25%) of the amount that has been designated herein as the PAGA Penalty or \$25,000.00, will be distributed among all Class Members. This "PAGA Payment" shall be paid to all PAGA Aggrieved Employees (regardless of whether they opt out of the Settlement Class) who worked for Defendant at any time during the PAGA Period, based on their proportional number of pay periods worked for Defendant in California during the PAGA Period. Specifically, each Class Member's portion of the PAGA Payment will be calculated by multiplying the PAGA Payment to be paid to Class Members (\$25,000) by a fraction, the numerator of which is the PAGA Aggrieved Employee's number of pay periods worked during the PAGA Period, and the denominator of which is the total pay periods worked by all PAGA Aggrieved Employees during the PAGA Period.

4. Calculation of Individual Settlement Payment.

As soon as practicable after all the Individual Settlement Amounts have been calculated, the Settlement Administrator shall determine the standard tax deductions and withholdings for the payments. Defendant will provide the Settlement Administrator and Class Counsel with any information reasonably necessary to perform this calculation along with the appropriate documentation. For purposes of taxation, thirty-three and one third percent (33.33%) of the distributions of the Net Settlement Amount will be attributable to wages, and sixty-six and two thirds

percent (slightly rounded up to 66.67%) of the distributions of the Net Settlement Amount will be attributable as interest and penalties. The Settlement Administrator shall deduct from each Individual Settlement Payment any and all Employee payroll taxes from the amount allocated to wages. Defendant shall not make as part of this Agreement, nor be required to make any deductions, nor pay any monthly contributions for any insurance, retirement, 401(k), or profit sharing plans related to monies paid as a result of this Settlement.

Each Class Participant will receive an IRS Form W-2 with respect to the wage portion of the Individual Settlement Payment and an IRS Forms 1099 reflecting the portion attributable to penalties and interest. In addition, the PAGA Payment shall be made to all Class Members (regardless of their “opt-out” status) and all recipients thereof shall be provided an IRS Form 1099 which shall include their share of the PAGA Payment. All Class Members are responsible to pay appropriate taxes due on all payments they receive, Each Class Member will be responsible for correctly characterizing this compensation for tax purposes and for payment of any taxes owing on their Individual Settlement Payment. Named Plaintiff, Class Counsel, Defendant and Defense Counsel shall have no responsibility for deciding the validity of the Individual Settlement Payment or any other payments made pursuant to this Agreement, shall not be liable under any circumstances for any errors in the Settlement Administration process, shall have no involvement in or responsibility for the determination or payment of taxes on the Individual Settlement Payment, and shall have no liability for any errors made with respect to such taxes.

5. Time for Payments. If no objection to the Settlement is made, the payment of all claims, Settlement Administration Expenses, attorneys’ fees, attorneys’ expenses, Service Award, and PAGA Payment shall be made by the Settlement Administrator within fifteen (15) days of the deposit of the Gross Settlement Amount by Defendant with the Settlement Administrator pursuant to

Section VI paragraph 1 hereof. If an objection to the Settlement is made and/or a timely appeal is filed, then payment of all claims, Settlement Administration Expenses, attorneys' fees, attorneys' expenses, Service Award, and PAGA Payment shall be made by the Settlement Administrator within sixty (60) days of the Effective Date (as defined in Section 1 paragraph 17 hereof).

6. Payment of Individual Settlement Payments. If the Settlement Administrator is not able to mail the Individual Settlement Payments to Class Participants within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date by which the Individual Settlement Payments will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to Class Participants until after the Effective Date and all timely claims have been considered, calculated, and accounted for. In the event that any Class Participant is deceased, payment shall be made payable to the estate of that Class Participant and delivered to the executor or administrator of that estate, unless the Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code Section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

Within fourteen (14) days of mailing the Individual Settlement Payments to Class Participants, the Settlement Administrator shall provide written notice to the Parties confirming the completion of the mailing.

7. Returned and Uncashed Settlement Checks. Each Class Participant must cash his or her Individual Settlement Payment check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator shall make reasonable efforts to re-mail it to the Class Participant at his or her correct address. If the check remains uncashed by the expiration of the 180-day period, the Settlement Administrator will pay the amount represented by the check to the cy pres recipient, Brave Global, 668 Obispo Ave., Long Beach,

California 90814 a 501(c)(3) organization dedicated to education and empowerment of at-risk youth, particularly vulnerable girls, in order to stop exploitation and sex-trafficking. In such event, the Class Participant will nevertheless remain bound by the Settlement.

8. Extension of Time to Pay and/or Process Claims. Should the Settlement Administrator need more time than is provided under this Agreement to complete any of its obligations, the Settlement Administrator may request, in writing, such additional time (including an explanation of the need for additional time) from Defense Counsel and Class Counsel. If Defense Counsel and/or Class Counsel do not agree, in writing, to the Settlement Administrator's request for additional time, the Settlement Administrator, Class Counsel or Defense Counsel may seek such additional time from the Court.

IX. NULLIFICATION OF THIS AGREEMENT

1. Non-Approval of the Agreement. If (a) the Court should for any reason decline to approve this Agreement in the form agreed to by the Parties; (b) the Court should for any reason fail to enter a Final Judgment and dismissal with prejudice of the Action; or (c) the judgment and dismissal is reversed, modified or declared or rendered void, then the Settlement and class certification shall be considered null and void, and neither the Settlement, class certification, nor any of the related negotiations or proceedings shall be of any force or effect, and the Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in this Agreement to facilitate approval. The Parties will be equally responsible for all charges incurred by the Settlement Administrator as of the date of entry of any order denying preliminary or final approval of this Settlement.

2. **Defendant's Right to Void Settlement.** If three percent (3%) or more of the Class submit valid Opt-Out Requests, Defendant shall have the exclusive right to void this Settlement. Defendant shall make its election within seven (7) days after its receipt of the Settlement Administrator's final report, as provided for in Section VII, paragraph 1, herein. If Defendant decides to void the Settlement, then the Settlement and class certification shall be considered null and void, and neither the Settlement, class certification, nor any of the related negotiations or proceedings shall be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if this Agreement had not been executed. In the event that Defendant elects to void the Settlement, the Settlement Administration Expenses incurred to that point shall be paid 50/50 by the Parties.

3. **Invalidation.** Invalidation of any material portion of the Settlement shall invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in full force and effect. The Parties will be equally responsible for all charges incurred by the Claims Administrator as of the time the Settlement is invalidated.

4. **Stay upon Appeal.** In the event of a timely appeal from the Final Judgment and dismissal, the Final Judgment shall be stayed, and none of the Common Fund shall be distributed to Class Members, the Named Plaintiff, or Class Counsel, and the actions required by this Agreement shall not take place until all appeal rights have been exhausted by operation of law.

5. **Apportionment of Settlement Administrator Charges in the Event of Settlement Failure.** In the event that the Settlement is not finally approved, any unused amount from the \$8,500 earmarked for use by the Settlement Claims Administrator (referenced in Section IV, paragraph 6 above) shall be returned to Defendant by the Settlement Administrator, and Class Counsel shall reimburse Defendant for one-half of the portion of the \$8,500 that had been expended by the

Settlement Administrator for Settlement Administration Expenses. In the event the Settlement Administrator has expended more than \$8,500 on Settlement Administration Expenses for the Settlement, the Parties shall be equally responsible for all such charges.

X. RELEASE OF CLAIMS

1. Release by Named Plaintiff. Following the Effective Date and issuance of the Individual Settlement Payment to Named Plaintiff, Named Plaintiff, on behalf of himself, and his heirs, representatives, successors, and assigns, agrees to forever fully and finally release, waive, acquit and discharge, to the fullest extent permitted by law, Released Parties from and against all Released Claims. Further, Named Plaintiff agrees to sign this Agreement and to be bound by the terms herein stated, and further agrees not to request to be excluded from the Agreement. Any such request for exclusion by a Named Plaintiff shall therefore be void and of no force or effect.

2. Release by Class Participants. Following the Effective Date and issuance of the Individual Settlement Payment to Class Participants, all Class Participants, on behalf of themselves, and each of their heirs, representatives, successors, and assigns, agree to forever fully and finally release, waive, acquit and discharge, to the fullest extent permitted by law the Released Parties from all Released Claims.

3. Release by PAGA Aggrieved Employees. Following the Effective Date and issuance of that portion of the PAGA Payment pertaining to each of the PAGA Aggrieved Employees, all PAGA Aggrieved Employees on behalf of themselves, and each of their heirs, representatives, successors, and assigns, agree to forever fully and finally release, waive, acquit and discharge, to the

fullest extent permitted by law, Released Parties from any and all claims under the PAGA premised on the facts and/or allegations in Plaintiff's letter to the LWDA dated June 1, 2020 that arose during the PAGA Period and is attached as **Exhibit 4**. It is understood and agreed that PAGA Aggrieved Employees receiving a share of the PAGA Payment as set forth in Section VIII, paragraph 3, will be issued a check for their share of the PAGA Payment and will not have the opportunity to opt out of, or object to, the PAGA release as set forth in this paragraph. Further, all PAGA Aggrieved Employees are bound by this release regardless of whether they cash their PAGA check.

4. **"Released Claims" Defined.** The "Released Claims" mean all claims that were pled in the Action, or which could have been pled in the Action based on the factual allegations in the Action, that arose during the Class Period, in addition to claims for failure to authorize and permit rest periods.

5. **Waiver of California Civil Code Section 1542.** With respect to any and all Released Claims only, the Named Plaintiff understands and agrees that upon the Effective Date, the Named Plaintiff shall have, by operation of the Final Judgment, waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

"SECTION 1542 – CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Named Plaintiff agrees that he shall and has, upon the Effective Date and Defendant's payment of the sums provided herein and by operation of the Final Judgment, waived any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code as to the Released Claims only. Named Plaintiff and may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the Released Claims only, but each agrees to, upon the Effective Date, fully, finally and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule without regard to the subsequent discovery or existence of such different or additional facts.

6. **California Labor Code Section 206.5.** In connection with the above release, and in consideration of Defendant's payments of the sums provided herein, each and every Class Participant will be deemed also to have acknowledged and agree that California Labor Code Section 206.5 is not applicable to Named Plaintiff and the Class Participants because there is a good faith dispute as to whether any wages are due at all to any of the Class Participants. California Labor Code Section 206.5 provides in pertinent part as follows:

“AN EMPLOYER SHALL NOT REQUIRE THE EXECUTION OF A RELEASE OF A CLAIM OR RIGHT ON ACCOUNT OF WAGES DUE, OR TO BECOME DUE, OR MADE AS AN ADVANCE ON WAGES TO BE EARNED, UNLESS PAYMENT OF THOSE WAGES HAS BEEN MADE.”

7. **Waiver of Money or Damages.** The Named Plaintiff also agrees that, to the extent permitted by law, if a claim is prosecuted in his name against Released Parties before any court or administrative agency, he waives, and agrees not to take

any award of money or other damages from such proceeding. The Named Plaintiff agrees that, unless otherwise compelled by law, if a claim is prosecuted in his name against Released Parties that, upon a written request by Defendant or its legal counsel, he will immediately request in writing that the claim on his behalf be withdrawn.

8. **Claims Not Released.** This Agreement will not release any person, party or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature, nor does it release any claims, actions, or causes of action which may be possessed by Class Members (other than the Named Plaintiff) under state or federal discrimination statutes, including, without limitation, the Cal. Fair Employment and Housing Act, Cal. Government Code Sections 12940 *et seq.*; the Unruh Civil Rights Act, Cal. Civil Code Sections 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000 *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. Sections 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sections 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines.

XI. DUTIES OF THE PARTIES

1. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by court order, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel, with

the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this Agreement.

2. Duty to Support and Defend the Settlement. The Parties hereto agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

3. Duties Prior to Court Approval. Class Counsel shall promptly submit this Agreement to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Agreement, Class Counsel shall apply to the Court for the entry of a preliminary approval order substantially in the form filed concurrently herewith as **Exhibit 2**, scheduling a hearing on the question of whether the proposed Settlement should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form and content the proposed Notice Packet attached hereto as **Exhibits 1A thru 1C**, and directing the mailing of the Class Notice and related materials to Class Members. Defense Counsel shall file a notice of non-opposition to the motion for preliminary approval or join in the motion.

XII. MISCELLANEOUS PROVISIONS

1. Continuing Jurisdiction. The Court shall retain continuing jurisdiction over this case to ensure the continuing implementation of the provisions of this Agreement pursuant to California Code of Civil Procedure Section 664.6.

2. Confidentiality. The Parties hereto, Class Counsel, and Defense Counsel will keep this Settlement confidential through the filing of a motion for preliminary approval. Thereafter, the Parties, Class Counsel, and Defense Counsel will agree to make no comments to the media or otherwise publicize the terms of this Settlement.

3. **Different Facts.** The Parties hereto, and each of them, acknowledge that, except for matters expressly represented herein, the facts in relation to the dispute and all claims released by the terms of this Agreement may turn out to be other than or different from the facts now known by each party and/or his or its counsel, or believed by such party or counsel to be true, and each party therefore expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this Agreement shall be in all respects effective and binding despite such difference.

4. **No Prior Assignments.** The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein released and discharged except as set forth herein.

5. **Non-Admission.** Nothing in this Agreement shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward the Named Plaintiff, the Class Members, or any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward the Named Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each and every material factual allegation and alleged claim asserted in the Action. To this end, the Settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the Settlement

are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the SAC in the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

6. **Non-Retaliation.** Defendant understands and acknowledges that it has a legal obligation not to retaliate against any member of the Class who elects to participate in the Settlement or elects to opt-out of the Settlement. Defendant will refer any inquiries regarding this Settlement to the Settlement Administrator or Class Counsel and will not discourage Class Members who are employees, directly or indirectly, from making claims, opting out or objecting to the Settlement. However, Class Members will be advised in the Class Notice that a Class Member's decision to opt-out of the Settlement will not reduce the amount of money required to be paid by Defendant to the Common Fund.

7. **Construction.** The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

8. **Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of California, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

9. **Notices.** Except for Class Member notices required to be made by the Settlement Administrator, any and all notices or other communications required or permitted under this Agreement shall be in writing and shall be sufficiently given if delivered in person to the party or their counsel or if sent to the party by U.S.

certified mail (postage prepaid), e-mail, or overnight delivery addressed as follows:

if to Plaintiff: Fletcher W. Schmidt of Haines Law Group, APC
2155 Campus Drive, Suite 180, El Segundo, CA 90245
fschmidt@haineslawgroup.com

if to Defendant: S.R. Bray, LLC dba PowerPlus!
Attn: Sam Cerny, V.P. Support Operations
5500 E. La Palma Ave.
Anaheim, CA. 92807
scerny@powerplus.com

With a copy to: H. Daniel Fuller of Cadden & Fuller LLP
2050 Main Street, Suite 260, Irvine, CA 92614
dfuller@caddenfuller.com

10. Captions and Interpretations. Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Agreement or any provision thereof.

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

12. Integration Clause. This Agreement contains the entire agreement between the Parties relating to the Settlement of the Action and the transactions contemplated thereby, 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 hereby superseded. No rights under this Agreement may be waived except in a writing signed by all Parties.

13. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective present and former heirs,

trustees, executors, administrators, representatives, successors, and assigns.

14. Class Counsel Signatories. Because the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Settlement, this Agreement may be executed on behalf of the Class by Class Counsel and the Named Plaintiff.

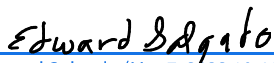
15. Corporate Signatories. Any person executing this Agreement or any such related document on behalf of a corporate signatory hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation to execute this Agreement or any such related document.

16. Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

17. Attorneys' Fees, Costs, and Expenses. Except as otherwise specifically provided for herein, each of the Parties shall bear his or its own attorneys' fees, costs and expenses, taxable or otherwise, incurred by him or its in or arising out of the Action and shall not seek reimbursement thereof from any other party.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures or the signature of their representatives. The date of the Agreement shall be the date of the latest signature.

Edward Salgado


Edward Salgado (Mar 7, 2022 10:41 PST)

Date: March 7, 2022

S.R. Bray LLC dba PowerPlus!

By: _____
Steven R. Bray
Its: President and CEO

Date: _____

APPROVED AS TO FORM AND CONTENT

Date: March 7, 2022

Haines Law Group, APC

By: 
Paul K. Haines
Fletcher W. Schmidt
Attorneys for Plaintiff,
Edward Salgado

Date: _____

CADDEN & FULLER LLP

By: _____
H. Daniel Fuller
Attorneys for Defendant,
S.R. Bray LLC dba Power Plus!

trustees, executors, administrators, representatives, successors, and assigns.

14. **Class Counsel Signatories.** Because the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Settlement, this Agreement may be executed on behalf of the Class by Class Counsel and the Named Plaintiff.

15. **Corporate Signatories.** Any person executing this Agreement or any such related document on behalf of a corporate signatory hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation to execute this Agreement or any such related document.

16. **Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

17. **Attorneys' Fees, Costs, and Expenses.** Except as otherwise specifically provided for herein, each of the Parties shall bear his or its own attorneys' fees, costs and expenses, taxable or otherwise, incurred by him or its in or arising out of the Action and shall not seek reimbursement thereof from any other party.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures or the signature of their representatives. The date of the Agreement shall be the date of the latest signature.

Edward Salgado

S.R. Bray LLC dba PowerPlus!

Date: _____

By: _____

Steven R. Bray
Its: President and CEO

Date: March 2, 2022

APPROVED AS TO FORM AND CONTENT

Date: _____

Haines Law Group, APC

By: _____
Paul K. Haines
Fletcher W. Schmidt
Attorneys for Plaintiff,
Edward Salgado

Date: March 2, 2022

CADDEN & FULLER LLP

By:  _____
H. Daniel Fuller
Attorneys for Defendant,
S.R. Bray LLC dba Power Plus!

EXHIBIT 1A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

EDWARD SALGADO, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

S.R. BRAY LLC, a California Limited Liability
Company d/b/a Power Plus!; and DOES 1 through 100,

Defendants.

Case No. 30-2020-01172134-CU-OE-CXC

**NOTICE OF PENDENCY OF CLASS ACTION
AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees, excluding all electricians and union members who were temporarily employed by Defendant S.R. Bray LLC d.b.a Power Plus! ("Power Plus"), who worked for Power Plus in California during the time period of April 6, 2016 through July 31, 2021 (the "Class Period").

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Edward Salgado v. S.R. Bray d.b.a Power Plus!*, Orange County Superior Court, Case No. 30-2020-01172134-CU-OE-CXC (the "Lawsuit"). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Power Plus' records show that you were employed by Power Plus as a non-exempt employee in California during the Class Period. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Edward Salgado ("Plaintiff") brought this lawsuit against Power Plus, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class Members, are known as "Class Counsel."

In the Lawsuit, Plaintiff alleges that Power Plus: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to pay all reporting time pay; (4) failed to provide all lawful meal periods; (5) failed to authorize and permit all lawful rest periods; (6) failed to maintain accurate records and issue accurate, itemized wage statements; (7) failed to timely pay all final wages at separation; (8) engaged in unfair unlawful business practices; and (9) is liable for civil penalties under the Private Attorneys General Act ("PAGA").

Power Plus denies that it has done anything wrong. Power Plus denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Power Plus, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in Power Plus's best interests and the interests of Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Power Plus provided

relevant information to Class Counsel, the Settlement was reached after mediation and arms'-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Power Plus, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Power Plus, your decision about whether to participate in the Settlement will not affect your employment. California law and Power Plus's policy strictly prohibit unlawful retaliation. Power Plus will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / Settlement Class Members:	Attorneys for Power Plus:
HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Fletcher W. Schmidt (SBN 286462) fschmidt@haineslawgroup.com Alexandra R. McIntosh (SBN 320904) amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	CADDEN & FULLER LLP H. Dan Fuller (SBN 105758) Cecilia A. Perkins (SBN 128737) 114 Pacifica, Suite 450 Irvine, California 92618 Tel: (949) 788-0827 Fax: (949) 450-0650

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees who worked for Power Plus in California during the Class Period. Settlement Class Members who do not submit a valid and timely Opt-Out Request from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Power Plus, as described below in the “Release” section.

Power Plus agreed to pay \$3,750,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Service Award. The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Simpluris, Inc. to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$8,028.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount (which is currently estimated to be \$1,250,000) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through

Settlement finalization. Class Counsel also will ask for reimbursement of up to \$50,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Service Award. Class Counsel will ask the Court to award \$5,000.00 to Plaintiff as a Class Representative Service Award. This is meant to compensate Plaintiff for his service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$100,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$75,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$25,000.00) will be payable to the Settlement Class in addition to Net Settlement Amount.

Calculation of Settlement Class Members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Opt-Out Request (described below). The Net Settlement Amount will be divided as follows:

- (i) Wage Statement: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class Member who was employed by Power Plus at any time between April 6, 2019 and July 31, 2021 shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (ii) Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class Member who separated their employment from Power Plus at any time between April 6, 2017 and July 31, 2021.
- (iii) The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

Payment from PAGA Amount: In addition to the Net Settlement Amount, \$25,000.00 of the Gross Settlement Amount has been designated as the "PAGA Payment" as described above, and will be allocated to all Settlement Class members who worked for Power Plus in California at any time from June 1, 2019 to July 31, 2021 (the "PAGA Period"), in proportion to the number of pay periods that each Settlement Class member worked for Power Plus in California during that time period.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members who did not submit a valid and timely Opt-Out Request. Each participating Settlement Class Member who receives an Individual Settlement Payment must cash that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not cashed within 180 calendar days after mailing will be distributed by the Settlement Administrator to Brave Global, a 501(c)(3) charitable organization dedicated to education and empowerment of at-risk youth, particularly vulnerable girls, in order to stop exploitation and sex-trafficking.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be allocated as 66.67% penalties and interest issued pursuant to an IRS Form 1099; and 33.33% as wages issued pursuant to an IRS Form W-2. Settlement Class Members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Power Plus and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class Member who does not opt-out will release and discharge Power Plus and its present and former parent companies, subsidiaries, divisions, affiliates, joint ventures, and each of their respective present and former officers, directors, shareholders, owners, managers, members, agents, employees, attorneys, representatives, predecessors, successors and assigns (collectively, the “Released Parties”) from all claims that were pled in the Action, or which could have been pled in the Action based on the factual allegations in the Action, that arose during the Class Period (“Released Claims”). In addition, all Settlement Class members (whether or not they opt out) who worked for Power Plus in California at any point during the PAGA Period will release the Released Parties from any and all claims under the PAGA premised on the facts and/or allegations in Plaintiff’s letter to the LWDA dated June 1, 2020 that arose during the PAGA Period (the “PAGA Released Claims”).

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

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Individual Settlement Payment. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Individual Settlement Payment. Your award is based on the proportionate number of workweeks that you worked during the relevant time periods and whether your employment separated during the relevant time period. The information contained in Power Plus’s records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Individual Settlement Payment. If you disagree with the information in your Notice of Individual Settlement Payment, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Individual Settlement Payment. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Class Settlement, you may exclude yourself by sending to the Settlement Administrator an executed Opt-Out Request Form no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. A Opt-Out Request Form is included with this Notice.

Send the Opt-Out Request directly to the Settlement Administrator at **<<ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Opt-Out Request from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in the Class Settlement, and shall receive no benefits from the Class Settlement. However, to the extent you are eligible to receive a portion of the PAGA Amount, you will still receive that amount whether or not you submit a Opt-Out Request. This is because, if the Court approves the PAGA Settlement, there is no right to be excluded from the PAGA Release that is part of this Settlement. **Do not submit both a Dispute and a Opt-Out Request.** If you do, the Opt-Out Request will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Class Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection should include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. All objections or other correspondence must state

the name and number of the case, which is *Edward Salgado v. S.R. Bray d.b.a Power Plus!*, Orange County Superior Court, Case No. 30-2020-01172134-CU-OE-CXC.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department CX101 of the Orange County Superior Court, located at 751 W Santa Ana Blvd, Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department CX101 of the Orange County Superior Court, located at 751 W Santa Ana Blvd., Santa Ana, California 92701. If the location, date, and/or time of the Final Approval Hearing is moved, notice will be posted at <<ADMINISTRATOR TO INSERT URL>>. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Service Award to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Orange County Courthouse, located at 751 W Santa Ana Blvd., Santa Ana, California 92701, during regular business hours or on the Court's website listed below. You may also contact Class Counsel using the contact information listed above for more information.

Web Address: <https://ocjustice.occourts.org/civilwebShoppingNS/Login.do>

Case Number: 01172134

Year Filed: 2020

You may also view the Settlement Agreement, this Notice, the Opt-Out Request Form, and the Second Amended Complaint at <<ADMINISTRATOR TO INSERT URL>>.

PLEASE DO NOT CALL OR WRITE THE COURT, POWER PLUS, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

EXHIBIT 1B

NOTICE OF INDIVIDUAL SETTLEMENT PAYMENT

EDWARD SALGADO v. S.R. BRAY D.B.A POWER PLUS!
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2020-01172134-CU-OE-CXC

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment:

According to Power Plus's records:

- (a) You worked _____ workweeks from April 6, 2016 through July 31, 2021 (the Class Period);
- (b) You worked _____ workweeks from April 6, 2019 through July 31, 2021 (the Wage Statement);
- (c) You worked _____ pay periods from June 1, 2019 and July 31, 2021 (the PAGA Period); and
- (d) Your employment with Power Plus <<DID/DID NOT>> end between April 6, 2017 and July 31, 2021 (the Waiting Time Period).

Based on the above, your Individual Settlement Payment is estimated to be \$ _____.

(IV) If you disagree with items (a) - (d) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Power Plus' records, those records will control unless you are able to provide documentation that establishes that Power Plus' records are mistaken. If there is a dispute about whether Power Plus's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____

Date: _____

EXHIBIT 1C

OPT-OUT REQUEST FORM

**EDWARD SALAGADO V. S.R. BRAY LLC D.B.A POWER PUS!
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2020-01172134-CU-OE-CXC**

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:

**SIMPLURIS, INC.
EDWARD SALGADO V. S.R. BRAY LLC D.B.A POWER PLUS!
SETTLEMENT ADMINISTRATOR
ADDRESS
ADDRESS
PHONE
FAX**

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT. PLEASE NOTE THAT EMPLOYEES MAY NOT EXCLUDE THEMSELVES FROM THEIR SHARE OF THE PAGA PENALTIES.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Edward Salgado v. S.R. Bray LLC d.b.a Power Plus!*, Orange County Superior Court Case No. 30-2020-01172134-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *EDWARD SALGADO V. S.R. BRAY LLC D.B.A POWER PLUS!* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

Name

Telephone Number

Address

Date

Signature

Last Four Digits of Social Security Number: ____

EXHIBIT 2

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

EDWARD SALGADO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

S.R. BRAY LLC, a California limited liability
company d/b/a Power Plus!; POWER PLUS LLC,
a California limited liability company; and DOES
1 through 100,

Defendants.

CASE NO. 30-2020-01172134

*[Case assigned for all purposes to the Hon.
Glenda Sanders, Dept. CX101]*

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Complaint Filed: May 28, 2020
Trial Date: None Set

1 **[PROPOSED] ORDER**

2 The Motion of Plaintiff Edward Salgado (“Plaintiff”) for Preliminary Approval of Class
3 Action Settlement came regularly for hearing before this court on April 8, 2022, at 1:30 p.m. The
4 Court, having considered the proposed Class Action Settlement Agreement and Release of Claims
5 (“Settlement Agreement” or “Settlement”), attached as Exhibit A to the Declaration of Fletcher
6 W. Schmidt; having considered Plaintiff’s Motion for Preliminary Approval of Class Action
7 Settlement, memorandum of points and authorities in support thereof, and supporting declarations
8 filed therewith and subsequent thereto; and good cause appearing, HEREBY ORDERS THE
9 FOLLOWING:

10 1. The Court GRANTS preliminary approval of the class action settlement as set
11 forth in the Settlement Agreement, and finds its terms to be within the range of reasonableness of
12 a settlement that ultimately could be granted approval by the Court at a Final Fairness hearing.

13 2. The Court preliminarily approves the terms of the Settlement Agreement and finds
14 that they fall within the range of approval as fair, adequate and reasonable. Based on a review of
15 the papers submitted by Plaintiff, the Court finds that the Settlement is the result of arms’-length
16 negotiations conducted after Plaintiff and/or Plaintiff’s counsel adequately investigated the claims
17 and became familiar with the strengths and weaknesses of the claims. The assistance of an
18 experienced mediator in the Settlement process supports the Court’s conclusion that the
19 Settlement is non-collusive and reasonable. The Settlement is presumptively valid, subject only
20 to any objections that may be raised pursuant to the terms of the Settlement Agreement.

21 3. For purposes of the Settlement, the Court finds that the proposed Settlement Class
22 is ascertainable and that there is a sufficiently well-defined community of interest among the
23 members of the Settlement Class in questions of law and fact. Therefore, for settlement purposes
24 only, the Court grants conditional certification of the following Settlement Class:

25 All current and former non-exempt employees, excluding all electricians and union
26 members who were temporarily employed by Defendant S.R. Bray LLC d.b.a Power
27 Plus! (“Power Plus”), who worked for Power Plus in California during the time
28 period of April 6, 2016 through July 31, 2021 (the “Class Period”).

4. For purposes of the Settlement, the Court designates named Plaintiff Edward

Salgado as Class Representative, and designates Paul K. Haines, Fletcher W. Schmidt, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel.

5. The Court designates Simpluris as the third-party Settlement Administrator for mailing notices.

6. The Court approves, as to form and content, the Notice of Pendency of Class Action and Proposed Settlement (“Class Notice”), the Notice of Individual Settlement Payment, and Opt-Out Request Form (collectively referred to as the “Notice Packet”) attached as Exhibits 1A, 1B, and 1C to the Settlement Agreement.

7. The Court finds that the form of notice to the Settlement Class regarding the pendency of the action and of the Settlement, and the methods of giving notice to Settlement Class Members, constitute the best notice practicable under the circumstances, and constitute valid, due, and sufficient notice to all Settlement Class Members. The form and method of giving notice complies fully with the requirements of California Code of Civil Procedure section 382, California Civil Code section 1781, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

8. The Court further approves the procedures for Settlement Class Members to opt-out of or object to the Settlement, as set forth in the Class Notice and the Settlement Agreement.

9. The procedures and requirements for submitting objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Member’s objection to the Settlement, in accordance with the due process rights of all Settlement Class Members.

10. The Court directs the Settlement Administrator to mail the Notice Packet to the Settlement Class Members in accordance with the terms of the Settlement.

11. The Class Notice shall provide at least 60 calendar days’ notice for Settlement Class Members to submit disputes, opt-out of, or object to the Settlement.

12. The Final Approval Hearing on the question of whether the Settlement Agreement should be finally approved as fair, reasonable and adequate is scheduled for _____, 2022 at _____ a.m. / p.m. in Department CX101 of this Court,

located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to the Settlement Class Members. The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement Agreement.

13. At the Final Approval Hearing, the Court will consider: (a) whether the Settlement Agreement should be approved as fair, reasonable, and adequate for the Settlement Class; (b) whether a judgment granting final approval of the Settlement should be entered; and (c) whether Plaintiff's application for an enhancement payment, settlement administration costs, payment to the California Labor and Workforce Development Agency ("LWDA") for its 75% share of civil penalties under the Private Attorneys General Act ("PAGA"), Labor Code section 2698 *et seq.*, and Class Counsel's attorneys' fees and costs should be granted.

14. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of the Settlement and Plaintiff's application for an enhancement payment, settlement administration costs, payment to the LWDA for its share of PAGA penalties, and Class Counsel's attorneys' fees and costs prior to the Final Approval Hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

15. An implementation schedule is provided below (assuming the Court grants preliminary approval of the Settlement on April 8, 2022):

Event	Date
Defendant to provide class contact information to Settlement Administrator no later than:	April 23, 2022
Settlement Administrator to mail the Notice Packet to the Settlement Class Members no later than:	May 6, 2022
Deadline for Class Members to submit disputes, request exclusion from, or object to the Settlement:	July 5, 2022
Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement:	At least 16 court days prior to Final Approval Hearing

Final Approval Hearing

☐ September 2, 2022 at 1:30 p.m.
☐ _____, 2022
at _____ a.m. / p.m.

16. Pending the Final Approval Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

17. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement.

18. In the event the Settlement is not finally approved, or otherwise does not become effective in accordance with the terms of the Settlement, this Order shall be rendered null and void and shall be vacated, and the parties shall revert to their respective positions as of before entering into the Settlement.

IT IS SO ORDERED.

Dated: _____

Honorable Glenda Sanders
Judge of the Superior Court

EXHIBIT 3

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

EDWARD SALGADO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

S.R. BRAY LLC, a California limited liability
company d/b/a Power Plus!; POWER PLUS LLC,
a California limited liability company; and DOES
1 through 100,

Defendants.

Case No. 30-2020-01172134-CU-OE-CXC

*[Assigned for all purposes to the Hon.
Glenda Sanders, Dept. CX101]*

**[PROPOSED] JUDGMENT AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES AND COSTS, AND
CLASS REPRESENTATIVE SERVICE
AWARD**

Action Filed: May 28, 2020
Trial Date: None Set

[PROPOSED] JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF SETTLEMENT

1 **[PROPOSED] JUDGMENT AND ORDER**

2 The Motion of Plaintiff Edward Salgado (“Plaintiff”) for Final Approval of Class Action
3 Settlement, Attorneys’ Fees and Costs, and Class Representative Service Award came on
4 regularly for hearing before this Court on TBD, at 1:30 p.m., pursuant to California Rule of Court
5 3.769 and this Court’s Order Granting Preliminary Approval of Class Action Settlement
6 (“Preliminary Approval Order”). Having considered the parties’ Class Action Settlement
7 Agreement and Release of Claims (“Settlement” or “Settlement Agreement”), and all other
8 documents and evidence presented in support thereof, and recognizing the sharply disputed
9 factual and legal issues involved in this case, the risks of further prosecution, and the benefits to
10 be received by the Class Members pursuant to the Settlement, the Court hereby makes a final
11 ruling that the proposed Settlement is fair, reasonable, and adequate, and is the product of good
12 faith, arms’-length negotiations between the parties. Good cause appearing therefor, the Court
13 hereby GRANTS Plaintiff’s Motion for Final Approval of Class Action Settlement and HEREBY
14 ORDERS THE FOLLOWING:

15 1. Final judgment is hereby entered in conformity with the Settlement and this
16 Court’s Preliminary Approval Order.

17 2. The conditional class certification contained in the Preliminary Approval Order is
18 hereby made final, and the Court thus certifies, for purposes of the Settlement, a Settlement Class
19 consisting of:

20 All current and former non-exempt employees, excluding all electricians and union
21 members who were temporarily employed by Defendant S.R. Bray LLC d.b.a Power
22 Plus! (“Power Plus”), who worked for Power Plus in California during the time period
23 of April 6, 2016 through July 31, 2021 (the “Class Period”).

24 3. Plaintiff Edward Salgado is hereby confirmed as the Class Representative and Paul
25 K. Haines, Fletcher W. Schmidt, and Alexandra R. McIntosh of Haines Law Group, APC are
26 hereby confirmed as Class Counsel.

27 4. Notice (in the form attached hereto as Exhibit 1A thru 1C to the Settlement
28 Agreement) was provided to the Class Members as set forth in the Settlement Agreement, which

1 was approved by the Court on April 8, 2022, and the notice process has been completed in
2 conformity with the Court's Preliminary Approval Order. The Court finds that said notice
3 constituted reasonable notice under the circumstances, and constituted valid, due, and sufficient
4 notice to all Class Members. The Notice of Class Action Settlement provided due and adequate
5 notice of the proceedings and matters set forth therein, informed Class Members of their rights,
6 and fully satisfied the requirements of California Code of Civil Procedure section 382, California
7 Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other
8 applicable law.

9 5. The Court finds that [number to be inserted] Class Members objected to the
10 Settlement and [number to be inserted] Class Members submitted an Opt-Out Request in order to
11 opt-out of the Settlement. As such, the Court determines that [name of class members to be
12 inserted] [is/are] excluded from the Settlement and the Settlement Class.

13 6. The Court finds that the [percentage to be inserted]% participation rate supports
14 final approval.

15 7. The Court hereby approves the Settlement as set forth in the Settlement Agreement
16 as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement Agreement
17 according to its terms.

18 8. For purposes of settlement only, the Court finds that: (a) the Class Members are
19 ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions
20 of law or fact common to the Class Members, and there is a well-defined community of interest
21 among Class Members with respect to the subject matter of the litigation; (c) the claims of the
22 Class Representative are typical of the claims of the Class Members; (d) the Class Representative
23 has fairly and adequately protected the interests of the Class Members; (e) a class action is
24 superior to other available methods for an efficient adjudication of this controversy; and (f) Class
25 Counsel is qualified to serve as counsel for the Class Representative and the Class Members.

26 9. The Court finds that given the absence of objections, and objections being a
27 prerequisite to appeal, this Order will be considered final as of the date of entry.

1 10. As of the date that this Judgment becomes final, all Class Members, except those
2 who submitted an Opt-Out Request form (identified in Paragraph 5 above), release and discharge
3 Power Plus and its present and former parent companies, subsidiaries, divisions, affiliates, joint
4 ventures, and each of their respective present and former officers, directors, shareholders, owners,
5 managers, members, agents, employees, attorneys, representatives, predecessors, successors and
6 assigns (collectively, the “Released Parties”) from all claims that were pled in the Action, or
7 which could have been pled in the Action based on the factual allegations in the Action, that arose
8 during the Class Period (“Released Claims”). In addition, all Settlement Class members (whether
9 or not they opt out) who worked for Power Plus in California at any point during the PAGA Period
10 will release the Released Parties from any and all claims under the PAGA premised on the facts
11 and/or allegations in Plaintiff’s letter to the LWDA dated June 1, 2020 that arose during the
12 PAGA Period (the “PAGA Released Claims”). This release runs from April 6, 2016 through and
13 including July 31, 2021, and becomes effective upon the date this Order is signed.

14 11. The Court orders that within 30 days of the [Effective Date or the date of this
15 Order], Power Plus will deliver the Gross Settlement Amount (\$3,750,000.00) to Simpluris (the
16 “Settlement Administrator”), as provided for in the Settlement.

17 12. The Court finds that the Individual Settlement Payments, as provided for in the
18 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
19 distribute these payments in conformity with the terms of the Settlement.

20 13. The Court finds that the payment to the State of California Labor and Workforce
21 Development Agency (“LWDA”) in the amount of \$75,000.00 for its 75% share of the civil
22 penalties allocated under the PAGA is fair, reasonable, and adequate, and orders the Settlement
23 Administrator to distribute this payment in conformity with the terms of the Settlement.

24 14. The Court finds that the Class Representative’s Service Award in the amount of
25 \$5,000.00 is appropriate in recognition of the risks Plaintiff undertook; for the amount of time
26 and effort spent by Plaintiff as the Class Representative; for the general release provided by
27 Plaintiff as part of the Settlement Agreement; and the service Plaintiff provided to the Class
28

Members. The Court finds that this amount is fair, reasonable, and adequate, and orders that the Settlement Administrator make this payment in conformity with the terms of the Settlement.

15. The Court finds that attorneys' fees in the amount of \$1,250,000.00 and litigation costs of \$[up to \$50,000] for Class Counsel are fair, reasonable, and adequate, and orders that the Settlement Administrator distribute these payments to Class Counsel in conformity with the terms of the Settlement.

16. The Court orders that the Settlement Administrator be paid \$8,500.00 from the Gross Settlement Amount for all of its work done and to be done until the completion of this matter, and finds that sum appropriate.

17. The Settlement Administrator will prepare a final accounting declaration which will be filed no later than _____. A Final Accounting Hearing will be held on _____, 2023, at _____ a.m./p.m. in Department CX101 of the above-entitled Court.

18. This document will constitute a final judgment pursuant to California Rule of Court 3.769(h) which provides, "If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." The Court will retain jurisdiction to enforce the Settlement, the Final Approval Order, and this Judgment, pursuant to California Rule of Court 3.769(h) and California Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: _____, 2022

Honorable Glenda Sanders
Judge of the Superior Court

EXHIBIT 4

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

June 1, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Edward Salgado v. S.R.Bray LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Edward Salgado (“Mr. Salgado”) in claims arising from his employment with S.R.Bray LLC, a California limited liability company d/b/a Power Plus!; Power Plus LLC, a California limited liability company, and Does 1 through 100 (collectively “Defendants”). Mr. Salgado is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Mr. Salgado was employed by Defendants as a non-exempt employee from approximately April 2016 through approximately May 13, 2020. From approximately March 13, 2018 until May 2020, Plaintiff was on a medical leave of absence.

Throughout Mr. Salgado and other aggrieved employees’ employment with Defendants, Mr. Salgado and other aggrieved employees regularly worked in excess of 8.0 hours per workday (at times working in excess of 12.0 hours) and/or 40.0 hours per workweek but did not receive overtime compensation equal to one and one-half times their regular rate of pay for these overtime hours. Specifically, Mr. Salgado and other aggrieved employees earned non-discretionary incentive bonuses, and other forms of pay that cannot be excluded from the regular rate of pay as a matter of law, including but not limited to, payments denoted in their wage statements as “Bonus,” “Profit Sharing,” and “On Call” (hereinafter collectively referred to as “Incentive Pay”). As a result of Defendants’ payment of Incentive Pay to Mr. Salgado and other aggrieved employees, Defendants miscalculated Mr. Salgado’s and other aggrieved employees’ regular rate of pay, resulting in a systematic underpayment of overtime wages when Mr. Salgado and other aggrieved employees worked overtime hours during the same time period for which the Incentive Pay was earned.

Defendants also failed to pay Mr. Salgado and other aggrieved employees all reporting time wages owed. During Mr. Salgado's employment with Defendants, Defendants required Mr. Salgado and other aggrieved employees to work on call shifts, during which Mr. Salgado and other aggrieved employees had to be available to receive a call at any point during the workday. On information and belief, if Mr. Salgado and other aggrieved employees received a call during an on call shift, they only had a limited amount of time to respond to the call and arrive at the worksite. If the employee failed to answer the call and/or arrive at the worksite within a specified amount of time, he or she would be disciplined. On occasions when Mr. Salgado and other aggrieved employees were required to work scheduled on call shifts, but were not called in to work or were furnished less than half of their usual or scheduled day's work, Defendants failed to pay Mr. Salgado and other aggrieved employees with half their usual or scheduled day's work (but in no event less than two hours nor more than four hours), at their regular rate of pay in violation of Wage Order 4 § 5 and Labor Code § 1198.

Defendants failed to provide Mr. Salgado and other aggrieved employees with all legally compliant meal periods of at least 30-minutes commencing before the conclusion of the fifth hour of work and/or a second meal period when they worked shifts in excess of 10.0 hours. As Mr. Salgado and other aggrieved employees were required to provide installation services at five to six different locations per shift, Mr. Salgado and other aggrieved employees were often required to take a meal period that was less than 30-minutes and/or take their meal periods while commuting in between jobs. Additionally, Defendants failed to keep accurate records of employee hours worked, including time records showing when employees were provided with meal periods. During Mr. Salgado and other aggrieved employees' employment with Defendants, Defendants did not require Mr. Salgado and other aggrieved employees to clock in and out for their meal periods, and maintained no other records of employee meal periods. Defendants also did not cease operations during meal periods. Instead, Defendants automatically deducted 30-minutes from employee time records regardless if they were actually provided with a legally compliant 30-minute meal period. As a result of Defendants failure to provide all legally required meal periods, unlawful deduct policy, and failure to accurately record employee meal periods, Defendants failed to compensate their employees with the required meal period premium for each workday in which employees experienced a meal period violation as well as compensate its employees for all minimum and overtime wages earned.

Defendants failed to pay Mr. Salgado and other aggrieved employees with all accrued vacation wages earned at the time of termination. Although Mr. Salgado separated from his employment with Defendants on or about May 13, 2020, Defendants failed to pay Mr. Salgado all accrued vacation wages. On information and belief, Defendants have a policy and practice of failing to pay its employees with all accrued vacation wages earned at the time of separation in violation of Labor Code § 227.3.

As a result of Defendants' failure to compensate Mr. Salgado and other aggrieved employees for all minimum wages, overtime wages, reporting time pay, and meal period premium wages earned, Defendants maintained inaccurate payroll records, issued inaccurate wage statements to Mr. Salgado and other employees, and failed to pay Mr. Salgado and other aggrieved employees all wages due at their separation of employment.

Additionally, Defendants issued facially deficient wage statements that failed to include all applicable hourly rates in effect during the period and the corresponding number of hours worked at each hourly rate as Defendants' wage statements failed to include the applicable hourly rate for on call hours as well as the corresponding number of on call hours worked during the pay period. Defendants also failed to include the applicable hourly rate for double time hours.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"):

Minimum Wage Violations

Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes Defendants' failure to pay Mr. Salgado and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 4. Wage Order 4, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

Overtime Wage Violations

Defendants were required to pay Mr. Salgado and other aggrieved employees overtime wages for all overtime hours worked, as defined in Wage Order 4, § 3. *See* Labor Code §§ 1194(a) and 1198; Wage Order 4, § 3. As alleged above, Defendants caused Mr. Salgado and other aggrieved employees to work overtime hours but did not properly compensate Mr. Salgado and other aggrieved employees for such hours.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Salgado and other aggrieved employees with all required, off-duty meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. As a result, Mr. Salgado and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to

provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Record Keeping Violations

Defendants were required to keep accurate records of employee hours worked, including when employees begin and end each meal period. *See* Labor Code § 1174; Wage Order 4, § 7 (“Every employer shall keep accurate information with respect to each employee including ... Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”). As alleged above, Defendants failed to maintain accurate hours of employee hours worked by failing to keep any records of Mr. Salgado's and other aggrieved employees' meal periods.

Vacation Wages Violations

Labor Code § 227.3 requires that employees receive all accrued vacation wages at the time of their separation from employment. As alleged above, Defendants failed to timely pay Mr. Salgado and other aggrieved employees all of their accrued vacation wages at the time of separation from employment.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Mr. Salgado and other aggrieved employees all of their final wages at the time of separation, which included all overtime, and minimum wages as well as all meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Mr. Salgado and other aggrieved employees was willful and, consequently, entitles Mr. Salgado and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

Wage Statement Penalties

Defendants were required to furnish Mr. Salgado and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, all meal and rest period premium wages earned, the applicable double time rate, and the applicable hourly rate for “Bonus OT” and the corresponding number of “Bonus OT” hours worked. *See* Labor Code § 226(a). Defendants failure to furnish Mr. Salgado and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, and said failures led to, among other things, the non-payment of all wages earned, and deprived them of the information necessary to identify discrepancies in

Defendants' reported data. Defendants' failure to comply with its wage statement obligations was knowing and intentional, and Mr. Salgado and other aggrieved employees have suffered injury as a result.

As an "aggrieved employee," Mr. Salgado will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Salgado own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, 1197 by failing to pay Mr. Salgado and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Salgado and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Salgado and other aggrieved employees at the employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code § 227.3 by failing to pay Mr. Salgado and other aggrieved employees all vacation wages earned at the time of separation from employment.
- e. Defendants violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Mr. Salgado and other aggrieved employees;
- f. Defendants violated Labor Code § 226 by failing to furnish Mr. Salgado and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendants violated Labor Code § 204 by failing to pay Mr. Salgado and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Defendants violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Salgado and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

LWDA
June 1, 2020
Page 6 of 6

Very truly yours,
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to read "F.W. Schmidt", is centered below the typed name.

Fletcher W. Schmidt

cc: S.R.Bray LLC (via certified mail) and Power Plus LLC (via certified mail)

EXHIBIT B