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6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 STEVE TRACY, individually and on behalf of
12 all other similarly situated employees,

13 Plaintiff,

14 vs.

15 VON HOUSEN'S SACRAMENTO, INC., a
16 California Corporation;
17 GEORGE GRINZEWITSCH, JR., an
individual; and
18 DOES 1 to 100, inclusive,

19 Defendants.
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Case No. 34-2020-00282778

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: 2560577

Date: May 25, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: August 4, 2020

FAC Filed: November 20, 2020

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on May 25, 2021 at 9:00 a.m., in Department 54 before
4 Hon. Christopher E. Krueger, presiding. Named Plaintiff Steve Tracy ("Plaintiff") filed this putative
5 class action on August 4, 2020. The operative Complaint alleges that Defendant Von Housen's
6 Sacramento, Inc., ("Defendant") failed to pay overtime, failed to pay minimum wages, failed to
7 provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed
8 to timely pay final wages, failed to reimburse expenses, engaged in unfair competition, violated Labor
9 Code section 558, failed to maintain accurate records, and failed to pay wages in a timely manner.
10 Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General
11 Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs as part of this
12 Action. Defendants denied all of Plaintiff's claims and denied that this case was appropriate for class
13 treatment. No class has been certified.

14 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary Approval of
19 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
20 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
21 FOLLOWS:

22 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 all non-exempt employees who have or continue to work for Defendant in
27 California from August 4, 2016 through the earlier of either June 15, 2021
28 or the Preliminary Approval Date.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
2 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

3 The Court finds that Class Members meet the ascertainability and numerosity requirements since
4 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
5 the definition and the number of Class Members would make joinder impractical. The commonality and
6 predominance requirements are met for settlement purposes since there are questions of law and fact
7 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
8 contentions that Defendants caused the alleged violations outlined above by 1) maintaining a
9 compensation system that failed to pay putative class members for all hours worked; 2) failing to pay
10 putative class members for non-selling time, such as time spent in meetings, trainings, and during rest
11 periods; 3) failing to authorize and permit putative class members to take all meal and rest periods; 4)
12 failing to keep track of putative class members' hours worked; 5) failing to pay putative class members
13 overtime wages; and 6) failing to reimburse putative class members for the use of their personal
14 cellphones for work. The PAGA, waiting time penalty, wage statement violation, and unfair
15 competition claims also derive from these violations. Additionally, Class Members seek the same
16 remedies under state law. The typicality requirement for settlement purposes is also satisfied since the
17 claims of the Class Representative are based on the same facts and legal theories as those applicable to
18 the class members.

19 The Court also finds that preliminarily and conditionally certifying the settlement class is
20 required to avoid each Class Member from litigating similar claims individually. This settlement will
21 achieve economies of scale for Class Members with relatively small individual claims and conserve the
22 resources of the judicial system.

23 The Court finds that Plaintiff Steve Tracy and Plaintiff's counsel, Galen T. Shimoda and
24 Justin P. Rodriguez of the Shimoda Law Corp., to be adequate representatives of the settlement class.
25 The Court appoints them as class representative and class counsel, respectively.

26 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

27 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
28 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of

1 a settlement, which could ultimately be given final approval by this Court. The Court also
2 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this
3 Court or opt-out of being bound by the preliminarily approved Agreement.

4 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
5 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
6 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
7 \$750,000 Maximum Settlement Amount.

8 The Court orders that Plaintiff Steve Tracy will receive \$15,000 as a Class Representative
9 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
10 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

11 The Court orders and approves Simpluris, Inc. to act as the Settlement Administrator in this case.
12 The Settlement Administrator will take its fees out of the Maximum Settlement Amount, which are not
13 to exceed \$12,500. Any difference between the actual cost of the Settlement Administrator and the
14 approved payment will be redistributed to Settlement Class Members on a pro-rata basis.

15 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
16 because there is a sufficiently identifiable class of beneficiaries (*i.e.*, Class Members), the benefits can
17 be accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
18 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
19 is a specific, lump-sum percentage of the Maximum Settlement Amount. *See Paul, Johnson, Alston &*
20 *Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977);
21 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees
22 request of thirty-five percent (35%) of the Maximum Settlement Amount, *i.e.*, \$262,500, to be
23 appropriate compensation for Class Counsel. The attorneys' fees request is within the range that has
24 been approved by other Courts in similar cases and is reasonable in light of the circumstances of this
25 case, the substantial and beneficial results obtained on behalf of Class Members, and the contingent
26 nature of the recovery over the course of this case, which included potential loss at summary judgment,
27 certification, and/or trial proceedings. Additionally, the Court orders that up to \$17,500 of the
28 settlement proceeds will be paid to Class Counsel for reasonable costs incurred in this case. Any

1 difference between the actual costs incurred and the \$17,500 shall be paid to the Settlement Class
2 Members on a pro-rata basis.

3 The Court approves of the Ten Thousand Dollars and No Cents (\$10,000) PAGA Payment,
4 which shall be paid from the Maximum Settlement Amount, not in addition to the Maximum Settlement
5 Amount, to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will
6 be paid to the Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%)
7 will be paid to Settlement Class Members on a pro rata basis as described in the Agreement. The Court
8 also finds that the Agreement provides a recovery that creates an effective substantial deterrent to any
9 potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

10 The Court approves of the residue distribution plan wherein any checks issued to Settlement
11 Class Members that are not cashed by the deadline to do so shall be tendered to the Controller of the
12 State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section
13 1500, *et seq.*, for the benefit of the Settlement Class Members who did not cash their checks until such
14 time that they claim their property.

15 The releases and waivers for Class Members who do not timely opt out of being bound by the
16 Agreement (*i.e.*, Settlement Class Members) and the Class Representative are also approved by the
17 Court as set forth in the Agreement.

18 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
19 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

20 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
21 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
22 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
23 the Covered Period, their pro rata share of the Net Settlement Amount, how to participate in the
24 settlement, how to file documentation in opposition to the proposed settlement, and when to appear at
25 the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice
26 of Settlement and proposed distribution of such notice by first class mail to each identified Class
27 Member at his or her most recent address based on a National Change of Address database search from
28 the Class Members' last known address and a skip trace on any Class Members who have the Notice of

Settlement returned as “undeliverable” or “not at this address” comports with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Class Members the opportunity to participate in the settlement, along with the Parties’ efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide the Class Data to Settlement Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement. Any information provided to Class Counsel to review during the settlement administration process will only identify Class Members by employee number.

4. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendant to provide Settlement Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators’ receipt of Class Members’ information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payment, The LWDA's share of the PAGA Payment, Settlement Administrator Costs, and payment to Settlement Class Members.	Within seven (7) calendar days of the Settlement being fully funded
Last day for Settlement Class Members to cash settlement checks	120 days after issuance of checks to Settlement Class Members
Last day for Settlement Administrator to deliver value of uncashed settlement checks to the Controller of the State of California	Within 14 days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline
Last day for Defendant to provide Settlement Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets the final approval hearing on the proposed date of September 16, 2021, at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

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IT IS SO ORDERED.

Date: _____

By: _____
Judge of the Superior Court

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Rylee K. Fonseca, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On April 14, 2021, I served the following documents on the party below:

- 9 • [Proposed] Order Granting Plaintiff's Motion For Preliminary Approval
10 Of Class Action And PAGA Settlement

11 Gregory C. Cheng (SBN: 226865)
12 Heidi G. Kim (SBN: 306641)
13 Ogletree, Deakins, Nash, Smoak & Stewart,
14 P.C.
15 One Embarcadero Center, Ste. 900
16 San Francisco, CA 94111
17 Telephone: (415) 536-3406
18 Facsimile: (415) 442-4870
19 Email: Gregory.cheng@ogletree.com
20 Heidi.kim@ogletree.com

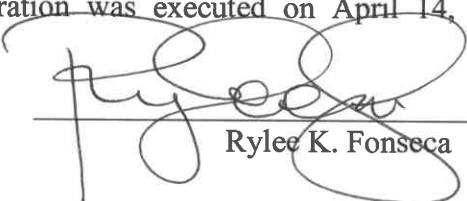
21 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the date set
25 forth above, I served the aforementioned document(s) on the parties in
26 said action by placing a true copy thereof enclosed in a sealed envelope
27 with postage thereon fully prepaid, for collection and mailing on this date,
28 following ordinary business practices, at Elk Grove, California, addressed
as set forth above.

29 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

30 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

31 [] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

32 I declare under penalty of perjury under the laws of the State of California that the foregoing
33 is true and correct, and that this declaration was executed on April 14, 2021 at Elk Grove,
34 California

35 
36 Rylee K. Fonseca
37
38

Galen T. Shimoda (Cal. State Bar No. 226752)
 Justin P. Rodriguez (Cal. State Bar No. 278275)
 Brittany V. Berzin (Cal. State Bar No. 325121)
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Attorneys for Plaintiff STEVE TRACY
 individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

STEVE TRACY, individually and on behalf of
 all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., a
 California Corporation;
 GEORGE GRINZEWITSCH, JR., an
 individual; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00282778

CLASS ACTION

**DECLARATION OF JUSTIN P.
 RODRIGUEZ IN SUPPORT OF
 PLAINTIFF'S MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION AND PAGA SETTLEMENT**

Reservation No.: 2560577

Date: May 25, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: August 4, 2020

FAC Filed: November 20, 2020

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Steve Tracy ("Plaintiff") herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff's
5 Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion"). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 ("Agreement") in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention
9 that Defendant Von Housen's Sacramento, Inc. ("Defendants") failed to pay overtime, failed to pay
10 minimum wages, failed to provide meal periods, failed to provide rest periods, failed to provide
11 accurate wage statements, failed to timely pay final wages, failed to reimburse expenses, engaged in
12 unfair competition, violated Labor Code section 558, failed to maintain accurate records, and failed to
13 pay wages in a timely manner. Plaintiff also alleged liability for civil penalties under the Private
14 Attorneys General Act ("PAGA"). These claims were based allegations that Defendants violated
15 California law by 1) maintaining a compensation system that failed to pay putative class members for
16 all hours worked; 2) failing to pay putative class members for non-selling time, such as time spent in
17 meetings, trainings, and during rest periods; 3) failing to authorize and permit putative class members
18 to take all meal and rest periods; 4) failing to keep track of putative class members' hours worked; 5)
19 failing to pay putative class members overtime wages; and 6) failing to reimburse putative class
20 members for the use of their personal cellphones for work. The PAGA, waiting time penalty, wage
21 statement violation, and unfair competition claims also derive from these violations.

22 3. Plaintiff is the only named representative in this matter. From our initial investigations
23 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
24 class action. We filed the action on or about August 4, 2020. Plaintiff exhausted administrative
25 remedies through the Labor and Workforce Development Agency ("LWDA") prior to amending the
26 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on July 31, 2020 setting forth
27 the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is being
28 filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified mail

1 and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the LWDA
2 regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65 days. As
3 such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First
4 Amended Complaint on November 20, 2020. A true and correct copy of Plaintiff's operative
5 Complaint is filed with this Motion as Exhibit B. A copy of the complaint was uploaded to the LWDA
6 on November 30, 2020, after we received an endorsed copy back from Court.

7 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

8 5. Defendant is represented in this matter by Gregory C. Chen and Carolyn B. Hall of
9 Ogletree, Deakins, Nash, Smoak & Stewart, P.C. From the beginning, Defendant has contested the
10 merits of this case, the suitability of the case for class action or representative treatment, the
11 manageability of the case at trial, and Plaintiff's ability to prove a violation in each pay period for each
12 employee among other defenses and contentions they made challenging the propriety of this action.
13 Defendant further contended that, even assuming there was a finding supporting the imposition of
14 PAGA penalties, the Court would likely exercise its discretion to substantially reduce any such
15 penalties owed based on evidence of good faith attempts to comply with Labor Code obligations by
16 Defendant. Notwithstanding its agreement to settle this matter, Defendant believes the practices
17 Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully comply with
18 all state and federal employment laws with respect to Plaintiff and Class Members. Also, Defendant
19 has contended that this matter is not appropriate for class certification outside of this proposed class
20 settlement.

21 6. Based on the expected testimony from Plaintiff and Class Members, a review of
22 Defendant's policies and procedures and other documents relating to the alleged claims, information on
23 the number of Class Members, Class Members' dates of employment, and a representative sample of
24 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light
25 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that
26 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The
27 length and risks of trial and other normal perils of litigation that impact the value of the claims were also
28 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of

1 potential class certification issues as well as the uncertainty of class certification, the difficulties of
2 complex litigation, and the lengthy process of establishing specific damages and various possible delays
3 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
4 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on
5 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
6 at separation, which would eliminate the value of the waiting time penalty entirely. Overall, I believe it
7 is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation
8 and potentially obtain zero funds to the class due to legal or factual issues in the case.

9 7. My office, including my partner, Galen T. Shimoda, my associate, Brittany V. Berzin, my
10 paralegals, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
11 and potential damages for such claims. The parties engaged in informal discovery and an exchange of
12 documents, including a representative sampling of employee data, such as timecards, paystubs, payroll
13 data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims.
14 The discovery covered all aspects of the asserted claims, including certification issues, merits issues,
15 damages, the scope and configuration of Class Members, the content and implementation of the wage
16 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.
17 From this production we were able to determine information critical to a reliable damages analysis such
18 as the average hourly rate, average daily hours worked, average number of workweeks and pay periods
19 that had potential violations based on the asserted claims, the frequency with which violations occurred
20 in a given week and/or pay period, and the number of former employees. This information allowed my
21 office to assess both liability and damages and create an accurate damages model. Plaintiff assisted in
22 all aspects of this litigation including providing factual information relating to Plaintiff's and similarly
23 situated employees' employment conditions, providing a substantial number of documents, and
24 answering questions regarding Defendant's factual contentions in this matter. This was important
25 because it directly related to our ability to maintain this case as a class action and our ability to obtain a
26 favorable settlement for the class.

27 8. Throughout this litigation our office had numerous communications with Defendant's
28 Counsel discussing our respective positions. The parties engaged in mediation on January 26, 2021

1 using an experienced mediator, Louis Marlin, Esq. It was only after approximately six months of
2 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
3 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
4 professional in nature.

5 9. The parties reviewed and analyzed substantial amounts of data regarding the class
6 claims. Based on our analysis and review of all relevant documents and Class Member information, I
7 have determined that the maximum damages for the asserted class claims is approximately \$3,615,686,
8 which includes civil penalties under the PAGA. The likely exposure for PAGA penalties is
9 approximately \$1,113,530 based on the counts alleged to the LWDA and the class data. Based on our
10 research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's
11 practices and/or policies were improper. As such, a "subsequent violation" may not be found for
12 penalty calculation purposes and the exposure analysis here is based on an "initial violation" valuation
13 being adopted by any fact finder if this matter went to trial.

14 10. I believe the PAGA penalties in this case may be reduced however due to the fact that
15 the penalties would be in addition to amounts owed for substantive violations and much of the penalties
16 are based on violations due to technical non-compliance with the Labor Code. Furthermore,
17 Defendants produced a substantial number of documents that a Court may find demonstrates a good
18 faith attempt at compliance that merits the reduction of civil penalties. Courts regularly cut civil
19 penalties on PAGA claims where statutory penalties for the same violations are assessed as well. The
20 statutorily authorized discretion that Courts have used to reduce penalties ranges substantially. *See*
21 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
22 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
23 Thus, civil penalties may be cut to approximately \$200,435.40 (82% reduction) or lower given the
24 derivative recovery. Taking this into account, the likely recovery if Plaintiff was successful at trial on
25 proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties
26 would be approximately \$2,702,591.40. Taking this into account, Plaintiff's \$750,000 gross recovery
27 under the Agreement represents approximately 27.8% of the maximum likely value in this matter.
28 After deducting from the Maximum Settlement Amount the proposed allocations for attorneys' fees

1 and costs, employer tax contributions, any Enhancement Payment to the Class Representative,
2 Settlement Administrator Costs, and the 75% portion of the PAGA Payment to the LWDA, the net
3 recovery under the Agreement (\$435,000) represents approximately 16.1 of the maximum likely value
4 in this matter. The average net award is approximately \$1,623.13. I believe the Agreement represents
5 a reasonable compromise of claims based on the legal and factual disputes in this case. The ability to
6 secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than
7 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this
8 Agreement.

9 11. I am a shareholder at Shimoda Law Corp. In agreeing to represent Plaintiff and take on
10 the case for all Class Members, I agreed to take this case on a contingency basis, meaning that I would
11 take a percentage of any settlement or judgment should we recover a monetary amount. I took a risk
12 that we would not recover any money in this matter if we were unsuccessful at trial. I also took on the
13 risk that the case may not be certified as a class action and/or be subject to an unfavorable summary
14 judgment ruling. However, I believe it is important to make sure employees are able to find affordable
15 representation in order to ensure that employers are complying with all their legal obligations towards
16 employees and paying employees all their hard-earned wages.

17 12. My law firm is a boutique law practice that focuses primarily in employment litigation,
18 emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a
19 Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the
20 Philosophy program. I was one of only two recipients of this award out of the entire Philosophy
21 Department. After U.C. Davis, I attended the University of the Pacific, McGeorge School of Law,
22 graduating in 2011 and receiving a Juris Doctorate. I graduated in the top 20% of my class and was a
23 member of the Traynor Honor Society at McGeorge. Other academic achievements of mine include
24 receiving a Witkin Award (top grade) in my legal research and writing course, a Witkin Award in
25 complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative
26 Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for
27 the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being
28 selected as a Sacramento County Bar Association Diversity Fellow in 2009. I was also a member of

1 the Employment and Labor Law Society and an officer for the Latino Law Students Association from
2 2009 to 2010.

3 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
4 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Since 2017, I have
5 received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards.
6 From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). In September 2018, I
7 was a panel speaker for the Sacramento County Bar Association Labor and Employment Law Section's
8 presentation of "*Epic Systems, PAGA, and the Future of Employment Arbitration in California.*" In
9 July 2020, I was a panel speaker for the Association of Defense Counsel of Northern California &
10 Nevada presentation of "Class Actions and PAGA Claims." My practice focuses on complex civil
11 litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act
12 ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm.
13 Class and/or PAGA actions I have litigated or am currently litigating, including the instant case,
14 includes, but is not limited to, the following:

- 15 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 16 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 17 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 18 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup.
19 Ct.);
- 20 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-
21 0012080 (San Joaquin Sup. Ct.);
- 22 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 23 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 24 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
25 Sup. Ct.);
- 26 • *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
27 Ct.);
- 28 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);

- 1 • *Bershell v. Dignity Health Methodist Hospital Sacramento, et al.*, Case No. 34-2017-
2 0222269 (Sac. Sup. Ct.);
- 3 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
4 00271174 (Sac. Sup. Ct.);
- 5 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
6 Ct.);
- 7 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac.
8 Sup. Ct.);
- 9 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880
10 (Sac. Sup. Ct.);
- 11 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 12 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
13 Ct.);
- 14 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 15 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
16 00209613 (Sac. Sup. Ct.);
- 17 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 18 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-
19 2017-00222101 (Sac. Sup. Ct.);
- 20 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 21 • *Ferreya v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup.
22 Ct.);
- 23 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 24 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 25 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup.
26 Ct.);
- 27 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac.
28 Sup. Ct.);

- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);

- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

14. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

15. My partner, Galen T. Shimoda, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the

1 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
2 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
3 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
4 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
5 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
6 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
7 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
8 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
9 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
10 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
11 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
12 as a Super Lawyer from 2014 to present.

13 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
14 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
15 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
16 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
17 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
18 Federal Courts, including up to certification, settlement, preliminary and final approval, and
19 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
20 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
21 include the following:

- 22 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 23 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 24 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 25 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 26 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 27 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 28 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);

- 1 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 2 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 3 Sup. Ct.);
- 4 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 5 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 6 Ct.);
- 7 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 8 Ct.);
- 9 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 10 Sup. Ct.);
- 11 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 12 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 13 Ct.);
- 14 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 15 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 16 00209613 (Sac. Sup. Ct.);
- 17 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 18 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 19 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 20 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 21 (San Joaquin Sup. Ct.);
- 22 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 23 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
- 24 Sup. Ct.);
- 25 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 26 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 27 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
- 28 Sup. Ct.);

- 1 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 2 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 3 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 4 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 5 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 6 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 7 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 8 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 9 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 10 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 11 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 12 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 13 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
- 14 Sup. Ct.);
- 15 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 16 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 17 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 18 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 19 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 20 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 21 00082201 (Sac Sup. Ct.);
- 22 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.
- 23 Sup. Ct.);
- 24 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 25 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 26 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 27 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 28 Sup. Ct.);

- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

17. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

18. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. I agreed to take this case on a contingency and as a class action with the possibility that I would not receive any compensation for my time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in employment law cases, the typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own firm and working with several other firms has been that the typical percentage negotiated between parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed several recent Federal District Court Cases where the Court has approved common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et*

1 *al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC
2 Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern
3 District, Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and Authorities.
4 I believe my request of \$262,500 (approximately 35%) for attorneys' fees is justified given the results
5 obtained on behalf of the class. Moreover, at this time, my firm has advanced all costs for Plaintiff and
6 Class Members and has not received any compensation whatsoever for our time expended in this case.
7 The expected costs through final approval are not expected to exceed \$17,500. Attached as Exhibit E is
8 a true and correct copy of the costs incurred prior to the filing of this Motion and the expected costs
9 incurred through the final approval and fairness hearing. Any difference in the actual costs and the
10 maximum amount allocated under the Agreement will be added to the Net Settlement Amount.

11 19. I have used several class action administrator companies in the wage and hour class
12 actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer
13 the proposed class settlement. Simpluris, Inc. has provided a quote for the estimated maximum cost of
14 administering the class settlement of approximately \$8,000. A true and correct copy of a cost estimate
15 provided by Simpluris, Inc. is filed with this Motion as Exhibit D. This is only an estimate, and final
16 pricing may vary depending on the issues, if any, that arise during the administration of the settlement.
17 However, the difference between the actual, lesser costs and \$12,500, if any, will be paid to the
18 participating Class Members on a pro rata basis.

19 20. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
20 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
21 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
22 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
23 Exhibit G.

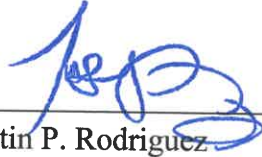
24 21. A true and correct copy of the proposed Notice of Settlement is being filed with this
25 Motion as Exhibit F.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 14 day of April 2021 in Sacramento, California.

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7 Justin P. Rodriguez
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Tracy v. Von Housen's Sacrametno, Inc.
Sacramento County Superior Court of California 34-2020-00282778

**PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Rylee K. Fonseca, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On April 14, 2021, I served the following documents on the party below:

- Declaration Of Justin P. Rodriguez In Support Of Plaintiff's Motion For Preliminary Approval Of Class Action And PAGA Settlement

Gregory C. Cheng (SBN: 226865) Heidi G. Kim (SBN: 306641) Ogletree, Deakins, Nash, Smoak & Stewart, P.C. One Embarcadero Center, Ste. 900 San Francisco, CA 94111 Telephone: (415) 536-3406 Facsimile: (415) 442-4870 Email: Gregory.cheng@ogletree.com Heidi.kim@ogletree.com	
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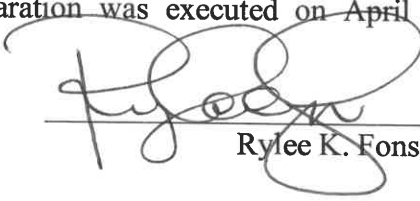
[XXX] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 14, 2021 at Elk Grove, California



Rylee K. Fonseca

FILED BY FAX

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff STEVE TRACY
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

STEVE TRACY, individually and on behalf of)
all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., a
California Corporation;
GEORGE GRINZEWITSCH, JR., an
individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00282778

CLASS ACTION

**DECLARATION OF STEVE TRACY IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: 2560577

Date: May 25, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: August 4, 2020

FAC Filed: November 20, 2020

Trial Date: None Set

1 I, Steve Tracy, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendants Von Housen's Sacramento, Inc. ("Defendants") from
6 approximately March 2000 to June 13, 2020 as a non-exempt employee receiving commissions and
7 bonuses. I was subject to all of Defendant's policies and practices that have been alleged as unlawful in
8 the Complaint and the notice sent to the Labor and Workforce Development Agency, including the
9 following: failure to pay overtime, failure to pay minimum wages, failure to provide meal periods,
10 failure to provide rest periods, failure to provide accurate wage statements, failure to timely pay final
11 wages, failure to reimburse expenses, unfair competition, violation Labor Code section 558, failure to
12 maintain accurate records, and failure to pay wages in a timely manner

13 3. I have actively participated in the litigation of this case. I have given a detailed account
14 of all the facts related to my employment and the claims asserted in the Complaint. I provided
15 extensive documentation in support of the claims brought against Defendant including paystubs,
16 Defendant's policies, and other documents related to my work with Defendant and to the claims brought
17 in the class action. I met with and assisted my attorneys Galen T. Shimoda, Justin P. Rodriguez in
18 understanding the documents and providing context for Defendant's payroll process and other wage
19 and hour policies as they applied to me and how I believed it applied to Defendant's other employees.

20 4. My attorneys explained to me the risks and benefits of bringing a class action and a
21 claim under the Private Attorneys General Act. I understood that I took on the risk, both professionally
22 and financially, in pursuing the case as a class and representative action rather than pursuing my claims
23 individually. I understood that pursuing the case as a class action meant that it would take substantially
24 longer than pursuing a claim with the California Labor Commissioner and that I risked getting nothing
25 in the end, but I believed it was important to make sure that Defendants followed the law for everyone.

26 5. I maintained communication with my attorneys throughout the litigation, discussing the
27 facts and policies at issue in the case with the Shimoda Law Corp. I asked questions when I needed
28 clarification about various aspects of this case to make sure there were continually steps taken to

1 advance the interests of the class. I also understood that the recovery in this case was for the benefit of
2 my fellow coworkers, not just for me. When my attorneys contacted me asking about more information
3 or documents related to the case, I made myself available and tried to give or obtain any additional
4 information I could. I participated in the negotiations and settlement discussions in this case, including
5 participating in mediation by phone, speaking with my attorney to answer questions, provide any
6 additional information needed to assist the negotiations, and discussing the potential terms of the
7 Agreement to evaluate its adequacy.

8 6. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
9 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe
10 the settlement terms and allocations are fair and reasonable given the facts of the case.

11 7. As a Class Representative, I took on the risk of having to pay Defendant's costs if we
12 were unsuccessful in bringing our claims.

13 8. I understand that any Class Representative Enhancement Payment I may receive is for
14 my participation as a Class Representative and it is not contingent on my support or approval of the
15 Agreement. I do not believe I have any conflicts with any Class Members.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct. Executed this 09 of April 2021 in Elk Grove, California.

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21 Steve Tracy
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Tracy v. Von Housen's Sacrametno, Inc.
Sacramento County Superior Court of California 34-2020-00282778

**PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Rylee K. Fonseca, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On April 14, 2021, I served the following documents on the party below:

- Declaration Of Steve Tracy In Support Of Plaintiff's Motion For Preliminary Approval Of Class Action And PAGA Settlement

Gregory C. Cheng (SBN: 226865) Heidi G. Kim (SBN: 306641) Ogletree, Deakins, Nash, Smoak & Stewart, P.C. One Embarcadero Center, Ste. 900 San Francisco, CA 94111 Telephone: (415) 536-3406 Facsimile: (415) 442-4870 Email: Gregory.cheng@ogletree.com Heidi.kim@ogletree.com	
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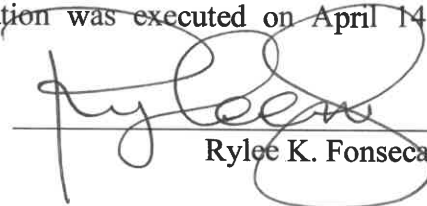
[XXX] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 14, 2021 at Elk Grove, California


Rylee K. Fonseca

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff STEVE TRACY
10 individually and on behalf of similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 STEVE TRACY, individually and on behalf of
14 all other similarly situated employees,

15 Plaintiff,

16 vs.

17 VON HOUSEN'S SACRAMENTO, INC., a
18 California Corporation;
19 GEORGE GRINZEWITSCH, JR., an
20 individual; and
21 DOES 1 to 100, inclusive,

22 Defendants.

Case No. 34-2020-00282778

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: 2560577

Date: May 25, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: August 4, 2020

FAC Filed: November 20, 2020

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Simpluris, Inc. Quote
E	Plaintiff's Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: April 14, 2021

Shimoda Law Corp.

By: _____

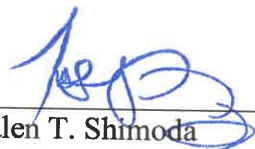

 Galen T. Shimoda
 Justin P. Rodriguez
 Brittany V. Berzin
 Attorneys for Plaintiff

EXHIBIT A

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiff STEVE TRACY
on behalf of himself and similarly situated employees

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Telephone: (415) 442-4810
Facsimile: (415) 422-4870

Attorneys for Defendant
VON HOUSEN'S SACRAMENTO, INC.

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

STEVE TRACY, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., a
California Corporation; GEORGE
GRINZEWITSCH, JR., an individual; and
DOES 1 to 100, inclusive,

Defendant.

Case No.: 34-2020-00282778

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: August 4, 2020
FAC Filed: November 20, 2020
Trial Date: None Set

This Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Settlement” or “Agreement”) is made and entered into between the Plaintiff Steve Tracy (“Plaintiff”) (on behalf of himself and the Settlement Class, as defined below), and Defendant Von Housen’s Sacramento, Inc. (“Defendant”) (collectively, the “Parties”) to effect a full and final settlement of all claims brought against Defendant in *Steve Tracy, et al. v. Von Housen’s of Sacramento, Inc., George Grinzewitsch, Jr., et al.*, Superior Court of California, County of Sacramento. This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

1. DEFINITIONS

The following terms, when used in this Agreement, have the following meanings:

1.1 “Action” means the above stated lawsuit, *Steve Tracy, et al. v. Von Housen’s of Sacramento, Inc., George Grinzewitsch, Jr., et al.*, filed on August 4, 2002 in the Superior Court for the State of California, County of Sacramento, , Case No. 34-2020-00282778

1.2 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation Regarding Class Action and PAGA Settlement and Release.

1.3 “Class” or “Class Member(s)” means all non-exempt employees who have or continue to work for Defendant in California during the Covered Period. The estimated number of Class Members is 268 (as of January 26, 2021).

1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez, and Brittany V. Berzin of the Shimoda Law Corp.

1.5 “Class Data” means information regarding Class Members that Defendant will, to the extent possible, compile from its existing electronic records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member’s (1) full name; (2) employee number; (3) last known address; (4) last known home telephone number; (5) Social Security number; (6) start dates, rehire dates (if any) and end dates (if any) of employment with Defendant during the Covered Period; and (7) identification of position(s) held during the Covered Period (i.e., whether a position subject to a commission/bonus pay plan or a non-exempt position not subject to a commission/bonus pay plan).

1.6 “Class Representative” means Plaintiff Steve Tracy.

1 1.7 "Complaint" means the operative Complaint on file in the Action with the Court.
2 1.8 "Court" means the Sacramento County Superior Court.
3 1.9 "Covered Period" means August 4, 2016 through the earlier of either June 15, 2021 or the
4 Preliminary Approval Date.

5 1.10 "Defendant" means Von Housen's Sacramento, Inc.

6 1.11 "Defendant's Counsel" means Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

7 1.12 "Effective Date" means either (a) the 60th calendar day after a signed order granting final
8 approval of this Agreement has been filed provided no motion to vacate the judgment, appeal, writ or
9 other appellate proceeding having been filed; or (b) the seventh (7th) calendar day after any motion to
10 vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally
11 dismissed with no material change to the terms of this Agreement and there is no right to pursue further
12 remedies or relief, whichever is later.

13 1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
14 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
15 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
16 Representative as a Settlement Class Member.

17 1.14 "Final Approval Date" means the date a signed order granting final approval of this
18 Agreement is filed with the Court.

19 1.15 "Individual Settlement Amount" or "Individual Settlement Payment" means the amount
20 payable from the Net Settlement Amount to each Settlement Class Member, as defined in Sections 1.18
21 and 1.33.

22 1.16 "LWDA" means the California Labor and Workforce Development Agency.

23 1.17 "Maximum Settlement Amount" is the sum of Seven Hundred Fifty Thousand Dollars and
24 No Cents (\$750,000.00).

25 1.18 "Net Settlement Amount" is the portion of the Maximum Settlement Amount available for
26 distribution to Settlement Class Members, as described in this Agreement, after deduction of Plaintiff's
27 attorneys' fees and litigation costs, Settlement Administrator Costs, employer tax contributions, the
28 LWDA's 75% share of the PAGA Payment, and Enhancement Payment to the Class Representative.

1.19 "Notice of Settlement" means the document substantially in the form attached hereto as Exhibit 1.

1.20 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice of Settlement to Class Members.

1.21 "PAGA" means Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.22 "PAGA Payment" means the amount allocated from the Maximum Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.23 "Parties" means Defendant and Plaintiff.

1.24 "Payment Ratio" means the respective Qualifying Workweeks for each Class Member within their respective subclass during the Covered Period divided by the total Qualifying Workweeks for all Class Members in their respective subclass during the Covered Period.

1.25 "Preliminary Approval Date" means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.26 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Settlement Class Member and from which the payments under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant until the payments required under the Agreement are made.

1.27 "Qualifying Workweeks" means the number of weeks worked by Class Members during the Covered Period in California, which will be calculated by the Settlement Administrator using the start and end dates of employment contained in the Class Data (as aggregated for any multiple employment periods). For Class Members, workweeks shall be defined as the total length of service (in days) in California during the Covered Period divided by seven. The calculation of a Class Member's workweeks, a determination as to whether a Class Member was actively employed in California in a particular workweek, and/or what subclass a Class Members falls within shall be construed from Defendant's records.

1.28 "Released Claims" means all causes of action and factual or legal theories that were alleged in the Complaint or reasonably could have been alleged based on the facts, causes of action, and legal theories contained in the Complaint, including all of the following claims for relief: (a) failure to pay overtime wages; (b) failure to pay minimum wages; (c) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest breaks, and to properly provide premium pay in lieu thereof; (e) waiting time penalties for untimely pay during employment and untimely final pay; (f) improper and/or inaccurate wage statements; (g) failure to reimburse business expenses; (h) failure to keep complete or accurate payroll records; (i) unfair business practices based thereon; (i) civil penalties under the Labor Code Private Attorneys General Act ("PAGA") based thereon; (j) any other claims or penalties under the wage and hour laws pleaded in the Action; and (k) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the Action, and the California Unfair Competition Law. The period of the Release shall extend to the limits of the Covered Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

1.29 "Released Parties" means Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, owners, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, and all persons acting under, by, though, or in concert with any of them, and each of them.

1.30 "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails the Notice of Settlement to Class Members and the last day on which Class Members may submit requests for exclusion or objections to the Settlement.

1.31 "Settlement Administrator" means and refers to Simpluris, Inc., the third-party entity that will administer the Agreement as outlined in Sections 7 and 8, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in

the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

1.32 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class Members; all costs and fees associated with communicating with Class Members, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Individual Settlement Payments, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Net Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

1.33 "Settlement Class Members" or "Settlement Class" means all Class Members after excluding any person who submits a timely and valid request for exclusion as provided in this Agreement.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about July 31, 2020, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime, failure to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursement expenses, violation of Labor Code section 558, failure to maintain accurate records, and failure to pay wages in a timely manner. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorney General on all alleged PAGA claims.

2.2 On or about August 4, 2020, Plaintiff filed a class action Complaint in Sacramento County Superior Court on behalf of himself and Class Members alleging claims for failure to pay overtime, failure

1 to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to provide
2 accurate wage statements, failure to pay final wages, and failure to pay reimbursement expenses. Plaintiff
3 filed a First Amended Complaint on approximately November 20, 2020 to add a PAGA cause of action
4 based on the violations alleged in the July 31, 2020 notice to the LWDA on behalf of himself and similarly
5 situated employees.

6 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel
7 with copies of all applicable versions of its policies and procedures, employee handbooks, information
8 on Class Members including, but not limited to, Class Members' workweeks, dates of employment, total
9 number of Class Members, their rates of pay, as well as timecard data and payroll reports for a randomly
10 selected sample of Class Members.

11 2.4 On January 26, 2021, the Parties participated in a lengthy mediation with private mediator
12 Louis Marlin, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution. At
13 all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

14 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
15 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
16 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
17 merits of the claims and the defenses to those claims.

18 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to pay
19 for all hours worked, including overtime wages; 2) failing to authorize and permit putative class members
20 to take all meal and rest periods; and 3) failing to reimburse putative class members for the use of their
21 personal cellphones for work. Plaintiff also alleged derivative violations. Defendant has denied each of
22 Plaintiff's claims and Defendant has denied that this Action is appropriate for class certification for
23 anything other than settlement purposes. The agreed upon Maximum Settlement Amount was reached
24 after evaluation of the Parties' respective theories of potential exposure for the underlying claims and the
25 class data. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the
26 potential liability based on Defendant's factual and legal contentions and defenses.

27 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
28 and the information exchanged to date, are more than sufficient to assess the merits of the respective

Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and Exhibit 1 are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

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4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.3. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Settlement, as set forth in Section 7.6.1.

4.2 Individuals entitled to recover under this Agreement will include only those individuals who are identified as being within the scope of this Agreement under Section 4.1.

4.3 Any person who believes that he or she is a Class Member and wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a data request to the Settlement Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time his or her employment with Defendant ended; (c) the years during which such employee was employed with Defendant; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant review their records.

4.4 If Defendant does agree that the person listed in a data request is a Class Member, the Settlement Administrator shall promptly mail a Notice of Settlement to the person who submitted the data request, at the address designated for that purpose in the data request. All provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements sent in response to data requests, and any person who submits a data request and is sent a Notice of Settlement in response shall be treated by the Settlement Administrator as a Class Member for all other purposes.

4.5 If Defendant disagrees that the person listed in a data request is a Class Member, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7)

calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records shall control unless the individual submitting the data request provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement Administrator. The decision by the Settlement Administrator shall be final and there shall be no right of appeal.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Maximum Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendant shall pay the Maximum Settlement Amount (\$750,000.00). In no event shall Defendant be liable for more than \$750,000.00 as a result of this Settlement except as set forth in the Escalator Clause of Section 10.2. Funding of the Maximum Settlement Amount shall occur in two (2) installments payable to the Settlement Administrator, which will be held in trust in a QSF. The first payment amount of \$500,000.00 shall be made within ten (10) business days of the Final Approval Date. The second and final payment of \$250,000.00 (or other additional amount as may be required by the Escalator Clause in Section 10.2, below) shall be made ninety (90) calendar days after the first payment is made. The Maximum Settlement Amount includes payments to Settlement Class Members, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the PAGA Payment, the Enhancement Payment to the Class Representative, and any monies necessary to satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Settlement Class Members allocated as wages.

5.2 Conditions Precedent: This Settlement will become final and effective only upon the occurrence of all of the following events:

- a) The Court enters an order granting preliminary approval of the Settlement;

- b) The Court enters a Final Approval Order and Judgment;
- c) The Effective Date occurs; and
- d) Defendant does not invoke its right to revoke the Settlement as described in paragraph 10.1 herein.

5.3 Nullification of Settlement Agreement. In the event that this Settlement Agreement is not preliminarily or finally approved by the Court, or fails to become effective (as set forth in Paragraph 1.12):

- a) This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
- b) The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
- c) None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

5.4 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% (\$262,500.00) of the Maximum Settlement Amount, which shall be paid from the Maximum Settlement Amount. Defendant agrees not to oppose Class Counsel's application or motion for attorneys' fees not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (\$262,500.00 out of \$750,000.00). Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$17,500, which shall be paid from the Maximum Settlement Amount. Defendant agrees to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$17,500 threshold, supported by declaration. In the event that the Court reduces or does not approve the requested attorney's fees and costs or advanced litigation expenses, Class Counsel shall not have the right to revoke this Agreement, and it will remain binding. The Settlement Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Settlement Class Members on a pro rata basis as set forth in 5.10.

1 5.5 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
2 Maximum Settlement Amount and shall not exceed \$12,500.00. The difference between any actual costs
3 and the allocated \$12,500 shall be added to the Net Settlement Amount.

4 5.6 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
5 an Enhancement Payment to the Class Representative in an amount not to exceed Fifteen Thousand
6 Dollars and No Cents (\$15,000.00) to compensate for the risks, time, and expense of his involvement in
7 the Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment
8 shall be in addition to Plaintiff's respective Individual Settlement Payment as a Settlement Class Member.
9 Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so
10 long as it does not exceed the amount stated herein. In the event that the Court reduces or does not
11 approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to
12 revoke this Settlement, and it will remain binding. The Enhancement Payment will be designated as a
13 non-wage payment and reported on an IRS Form 1099. Plaintiff shall be solely and legally responsible to
14 pay any and all applicable taxes on his Enhancement Payment and shall hold harmless Defendant from
15 any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative
16 Enhancement Payment. In the event that the Court awards less than the Enhancement Payment amount
17 requested, then any portion of the requested amount not awarded to the Class Representative shall be
18 added to the Net Settlement Amount to be distributed to Settlement Class Members on a pro rata basis as
19 set forth in 5.10.

20 5.7 PAGA Payment: Ten Thousand Dollars and No Cents (\$10,000.00) of the Maximum
21 Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%)
22 of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to
23 Settlement Class Members on a pro rata basis as described below in Section 5.10. Any amount not
24 approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to
25 be distributed to Settlement Class Members on a pro rata basis.

26 5.8 Treatment of Residue Pertaining to Uncashed Settlement Checks: For any portion of the
27 Net Settlement Amount allocated to Settlement Class Members that were not claimed by cashing their
28 respective settlement checks before the deadline to do so, that remaining amount shall be tendered to the

1 Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil
2 Code section 1500, *et seq.*, for the benefit of the Settlement Class Members who did not cash their checks
3 until such time that they claim their property. No portion of the Maximum Settlement Amount will revert
4 to Defendant for any reason.

5 **5.9 No Additional Benefits Contributions:** All Individual Settlement Amounts paid to
6 Settlement Class Members shall be deemed to be income solely in the year in which such amounts were
7 actually received. It is expressly understood and agreed that the receipt of such Individual Amounts will
8 not entitle any Settlement Class Member to any new or additional compensation or benefits under any
9 company bonus or other compensation or benefit plan or agreement in place during the period covered by
10 the Agreement, nor will it entitle any Settlement Class Member to any increased retirement, 401(k) and/or
11 403(b) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement
12 that the Individual Settlement Amounts provided for in this Agreement are the sole payments to be made
13 by Defendant to the Settlement Class Members in connection with this Agreement (notwithstanding any
14 contrary language or agreement in any benefit or compensation plan document that might have been in
15 effect during the period covered by this Agreement).

16 **5.10 Pro Rata Distribution Formula:** Payment to Settlement Class Members of their Individual
17 Settlement Payments will not require the submission of a claim form. A Net Settlement Amount will be
18 determined by subtracting from the Maximum Settlement Amount any amounts for approved attorneys'
19 fees and costs, employer tax contributions, any Enhancement Payment to the Class Representative, the
20 Settlement Administrator Costs, and the LWDA's share of the PAGA Payment. For payment allocation
21 purposes only, Class Members will be divided into two subclasses: (1) Positions subject to a
22 commission/bonus pay plan; and (2) all Class Members not falling into Subclass 1, *i.e.*, hourly-paid non-
23 exempt positions not subject to a commission/bonus pay plan. Subclass 1 shall be allocated 70% of the
24 Net Settlement Amount and Subclass 2 shall be allocated 30% of the Net Settlement Amount. Each Class
25 Member's proportionate share will be determined by dividing their total Qualified Workweeks worked
26 within their respective subclass during the Covered Period by the total Qualified Workweeks worked by
27 all Class Members within the subclass during the Covered Period. A Class Member may be a part of both
28 subclasses if during the Covered Period they worked a portion of the time in a position subject to a

1 commission/bonus pay plan and in a different portion of time, they worked in a non-commission/bonus
2 pay plan position. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
3 Class Member's individual share of the Net Settlement Amount. Payments shall be reduced as necessary
4 to account for mandatory payroll withholdings. Recipients of payments pursuant to this Agreement are
5 exclusively responsible for all other tax obligations.

6 5.11 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to
7 Settlement Class Members reflect a settlement of a dispute over claimed penalties and wages. The
8 Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to
9 Settlement Class Members as wages as well as calculating all required withholdings and deductions from
10 said wage payments. The characterization of Individual Settlement Amounts to Settlement Class Members
11 are as follows:

12 5.11.1 Twenty percent (20%) of each Settlement Class Member's Individual Settlement
13 Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes.
14 Settlement Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual
15 Settlement Amount, to be issued by the Settlement Administrator.

16 5.11.2 Eighty percent (80%) of each Settlement Class Member's Individual Settlement
17 Amount shall be allocated for disputed statutory penalties, civil penalties, reimbursement, and interest,
18 and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists
19 of other income, not wages, for which the Settlement Class Members shall receive an IRS Form 1099-
20 MISC, to be issued by the Settlement Administrator.

21 5.12 Settlement Class Members shall be solely responsible for the reporting and payment of their
22 share of any federal, state and/or municipal income or other taxes on payments made pursuant to this
23 Agreement, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and harmless from
24 any claims resulting from treatment of such payments as non-taxable, including the treatment of such
25 payments as not subject to withholding or deduction for payroll and employment taxes. No party has
26 made any representation to any of the other Parties as to the taxability of any payments pursuant to this
27 Agreement, including the payments to Settlement Class Members, the payments to Class Counsel, the
28 payments to the Class Representative, the payroll tax liability of Defendant, or the allocation of the Net

Settlement Amount or PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this Agreement.

5.13 No Additional Contribution by Defendant: Defendant's monetary obligation under this Agreement is limited to the Maximum Settlement Amount and any additional funds that may become necessary under the Escalator Clause set forth in 10.2. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Maximum Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible for the costs of the Settlement Administrator incurred between the date the Agreement was executed and the date of such event.

5.14 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.3 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.15 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members.

6. RELEASE

6.1 Limited Release of Claims by All Settlement Class Members: As of the Effective Date, in exchange for the consideration set forth in this Settlement Agreement, the Settlement Class Members will be deemed to have, and by operation of the Final Approval Order and Judgment, will have, expressly waived and released the Released Parties of the Released Claims (as defined above) to the fullest extent permitted by law. Settlement Class Members will be bound by a release of all claims and causes of action falling within the definition of "Released Claims" (above), whether known or unknown, and irrespective of the factual or legal basis for such claims. However, to be clear, the scope of the release is limited to the Released Claims. Plaintiff and the Settlement Class Members may hereafter discover facts or legal arguments in addition to or different from those they know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtues

1 of this Agreement, Plaintiff and the Settlement Class Members shall be deemed to have, and by operation
2 of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all
3 of the Released Claims. The period of the release shall extend to the limit of the Coverer Period. The res
4 judicata effect of the Judgment will be the same as that of the release. The Parties understand and
5 specifically agree that the scope of the release described in this Paragraph is a material part of the
6 consideration for this Agreement; was critical in justifying the agreed upon economic value of this
7 settlement and without it Defendant would not have agreed to the consideration provided; and is narrowly
8 drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of
9 claims that were or could have been alleged based on the facts, causes of cation, and legal theories
10 contained in Plaintiff's operative complaint. Settlement Claims Members specifically acknowledge that
11 they are aware of and familiar with the provisions of Section 1542 of the Civil Code, which provides as
12 follows: *A general release does not extend to claims that the creditor or releasing party does not know*
13 *or suspect to exist in his or her favor at the time of executing the release and that, if known by him or*
14 *her, would have materially affected his or her settlement with the debtor or released party.*

15 6.2 Upon the Final Approval Date, provided the Settlement is ultimately fully funded,
16 Settlement Class Members who do not opt out expressly waive and relinquish all rights and benefits each
17 may have under Section 1542 with respect to Settlement Class Members' Released Claims only, regardless
18 of whether they may hereafter discover facts in addition to or different from those which each now knows
19 and whether those claims are known or unknown, suspected or unsuspected, contingent or non-contingent,
20 that were asserted or could have been asserted upon any theory of law or equity without regard to the
21 subsequent discovery of existence of such different or additional facts. The *res judicata* effect of the
22 Judgment will be the same as that of the release.

23 6.3 General Release by Plaintiff Steve Tracy: As of the date on which full payment of the Class
24 Representative Enhancement Award has been made, in consideration for the consideration set forth in this
25 Agreement, Plaintiff, for himself and his heirs, successors and assigns, does hereby waive, release, acquit
26 and forever discharge the Released Parties from any and all claims, actions, charges, complaints,
27 grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist
28 on Plaintiff's behalf as of the date of this Agreement, including but not limited to any and all tort claims,

1 contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy
2 claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of
3 privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising
4 under any federal, state or other governmental statute, law, regulation or ordinance, including, but not
5 limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage
6 Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans
7 with Disabilities Act, the Age Discrimination in Employment Act, as amended ("ADEA"), the Employee
8 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment
9 and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's
10 Whistleblower Protection Act, California Business & Professions Code Section 17200 *et seq.*, the
11 California Labor Code Private Attorneys General Act of 2004, California Labor Code Section 2699 *et*
12 *seq.*, and any and all claims arising under any federal, state or other governmental statute, law, regulation
13 or ordinance. Plaintiff hereby expressly waives and relinquishes any and all claims, rights or benefits that
14 he may have under California Civil Code § 1542, which provides as follows: *A general release does not*
15 *extend to claims which the creditor or releasing party does not know or suspect to exist in his or her*
16 *favor at the time of executing the release and that, if known by him or her, would have materially*
17 *affected his or her settlement with the debtor or released party.* Plaintiff may hereafter discover claims
18 or facts in addition to, or different from, those which he now knows or believes to exist, but he expressly
19 agrees to fully, finally and settle and release any and all claims against the Released Parties, known or
20 unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time
21 of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from
22 Plaintiff's employment with Defendant. The Parties further acknowledge, understand and agree that this
23 representation and commitment is essential to the Agreement and that this Agreement would not have
24 been entered into were it not for this representation and commitment.

25 6.4 Without limiting the scope of this Agreement, Plaintiff Steve Tracy agrees that this
26 Agreement constitutes a knowing and voluntary waiver of any and all rights or claims that exist or that he
27 may claim to have under the ADEA, as amended by the Older Workers' Benefit Protection Act of 1990
28 (29 U.S.C. § 621 *et seq.*). Plaintiff Steve Tracy acknowledges all of the following:

- 1 1(a) The consideration provided pursuant to this Agreement, including the possibility of a service
2 award, is in addition to any consideration that he would otherwise be entitled to receive;
- 3 1(b) Plaintiff has been and is advised in writing to consult with an attorney prior to signing this
4 Agreement;
- 5 1(c) Plaintiff has been provided a full and ample opportunity to study this Agreement, including a
6 period of at least twenty-one (21) calendar days within which to consider it;
- 7 1(d) To the extent that Plaintiff takes fewer than twenty-one (21) calendar days to consider this
8 Agreement prior to signing it, he acknowledges that he had sufficient time to consider this
9 Agreement with legal counsel and that he expressly, voluntarily, and knowingly waives the full
10 twenty-one (21) calendar-day period;
- 11 1(e) Plaintiff agrees that any changes made to the Agreement during the twenty-one (21) day period
12 (whether material or immaterial) do not restart the running of the twenty-one (21) day period; and
- 13 1(f) Plaintiff is aware of his right to revoke this waiver of claims under the ADEA any time within the
14 seven (7) calendar-day period following the date of full execution of this Agreement and that the
15 waiver of claims under the ADEA shall not become effective or enforceable until the seven (7)
16 calendar-day revocation-period expires. Should Plaintiff revoke the waiver of claims under the
17 ADEA, he shall not request, and will not be entitled to receive, his Class Representative
18 Enhancement Payment referred to in paragraph 5.6, although the remainder of the terms of this
19 Agreement shall become effective and enforceable as of the date the Parties sign this Agreement.
- 20 1(g) To be effective, timely notice of revocation of the waiver of ADEA claims must be made in
21 writing and delivered to Defendant through its counsel, Gregory C. Cheng, Esq., at Ogletree
22 Deakins Nash Smoak & Stewart, P.C., One Embarcadero Center, Suite 900, San Francisco,
23 California 94111, before the eighth (8th) day after the date of Preliminary Approval ("Revocation
24 Period"). If mailed, the revocation must be properly addressed to the above addressee and
25 postmarked no later than the last day of the Revocation Period. If applicable, Plaintiff agrees to
26 keep written documentation proving that he revoked this Agreement as provided in this
27 paragraph, either by keeping the documents attesting to the delivery of the revocation, or
28

1 verification that the revocation was mailed. In the event Plaintiff revokes the waiver of ADEA
2 claims, he understands and agrees that he will not be entitled to a Class Representative
3 Enhancement Payment.

4 **7. SETTLEMENT ADMINISTRATION**

5 **7.1 Duties of Settlement Administrator:** The Settlement Administrator shall be responsible for:

6 1) receiving Class Member contact information and confirming addresses are valid; 2) calculating
7 estimated Individual Settlement Payments and any and all taxes associated with the Individual Settlement
8 Payments, including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class
9 Members whose address or contact information as provided to the Settlement Administrator is inaccurate
10 or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the
11 appropriate state and federal officials of this Agreement as required under the law; 5) receiving,
12 independently reviewing, and resolving any challenges (in consultation with Class Counsel and
13 Defendant's Counsel) from Class Members, including any associated documentation, regarding their
14 Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendant's Counsel, and
15 the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free
16 telephone line and responding to inquiries and requests for information or assistance from Class Members;
17 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement
18 after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement
19 Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be
20 distributed due to the inability to locate Class Members; 10) determining the validity of any disputes or
21 late opt-outs by previously unidentified Class Members; 11) paying any residual funds from uncashed
22 checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of the
23 administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
24 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
25 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
26 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g)
27 the number of total objections received; (h) the number of opt-out requests received; (i) the number of
28 disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding

the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to Settlement Class Members; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. Plaintiff, Class Counsel, Defendant and/or Defendant's counsel shall bear no responsibility for errors or omissions in the calculation or distribution of the settlement payments or development of this list of recipients of settlement payments by the Settlement Administrator. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. Defendant and Defendant's Counsel shall have no responsibility for validating and ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendant and Defendant's Counsel shall not bear any responsibility for errors and omissions in the calculation or distribution of the Individual Settlement Payments or any other distribution of monies contemplated by this Agreement.

7.2 Notice to Class Members: The Notice of Settlement will provide Class Members with a summary of the terms and conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, estimated Individual Settlement Payment, assigned subclass, how to dispute the individual's Qualifying Workweeks and/or assigned subclass, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class Members of the Maximum Settlement Amount, Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class Counsel's motion for attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's estimated Individual Settlement Payment.

7.3 Class Data and Mailing: No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class Data for purposes of preparing and mailing the Notice of Settlement, and any other information the Settlement Administrator

needs to effectuate notice to Class Members as outlined herein. The Settlement Administrator shall review the data to determine the number of Qualifying Workweeks for each Class Member and their assigned subclass. No later than fourteen (14) calendar days after receipt of such address information, the Settlement Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of Qualified Workweeks, assigned subclass, and estimated Individual Settlement Amounts for Class Members prior to mailing for quality assurance provided the personal identifying information is redacted and/or omitted.

7.4 Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein.

7.4.1 Calculation of Estimated Individual Settlement Payments. Using the Class Data, the Settlement Administrator will calculate the total Qualifying Workweeks for all Class Members in their respective subclass. The respective Qualifying Workweeks for each Class Member in their respective subclass will be divided by the total Qualifying Workweeks for all Class Members in their respective subclass, resulting in the Payment Ratio for each Class Member in their respective subclass. Each Class Member's Payment Ratio will then be multiplied by the estimated Net Settlement Amount as allocated to their respective subclass (with Subclass 1 allocated 70% of the Net Settlement Amount and Subclass 2 allocated 30% of the Net Settlement Amount).

7.4.2 Calculation of Individual Settlement Payments. Using the Class Data, or using the Qualifying Workweeks that were disputed and subsequently approved, the Settlement Administrator will calculate the total Qualifying Workweeks for all Settlement Class Members in each respective subclass. The respective Qualifying Workweeks for each Settlement Class Member in their respective subclass will be divided by the total Qualifying Workweeks for all Settlement Class Members in their respective subclass, resulting in the Payment Ratio for each Settlement Class Member in their respective subclass. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount as

1 allocated to their respective subclass (with Subclass 1 allocated 70% of the Net Settlement Amount and
2 Subclass 2 allocated 30% of the Net Settlement Amount).

3 7.5 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
4 is returned to the Settlement Administrator as non-delivered on or before the conclusion of the Notice
5 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
6 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
7 attempt to determine a correct address using a single skip-trace, computer or other search using the name,
8 address and/or Social Security number of the individual involved, and shall then perform a single re-
9 mailing within five (5) calendar days. Following each search that does not result in a corrected address,
10 for those Class Members who appear to be current employees of Defendant at the time of the Preliminary
11 Approval Date, the Settlement Administrator shall contact Defendant's Counsel for assistance and
12 Defendant shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain
13 valid mailing addresses for Class Members to the extent they are active employees of Defendant. In the
14 event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the
15 deadline for the Class Member to submit any request to opt-out, dispute, or objection shall be the end of
16 the Notice Period or 10 days from the date of the re-mailing, whichever is later. In the event the procedures
17 in this Section are followed and the Class Member does not timely and properly request to opt-out, the
18 Class Member shall be bound by all terms of the Agreement, including the releases contained in Section
19 6.

20 7.6 Responses to Notice of Settlement:

21 7.6.1 Opt-Outs: The Notice of Settlement shall provide that Class Members who wish to
22 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
23 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
24 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
25 excluded from the settlement; (c) identify the case name and number (*i.e. Tracy v. Von Housen's*
26 *Sacramento, Inc., et al.*, 34-2020-00282778); (d) be signed; and (e) be post-marked no later than the
27 conclusion of the Notice Period or the re-mailing timeline stated in Section 7.5. The Class Member must
28 personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class

Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final judgment thereon, regardless of whether they otherwise have requested to opt-out of the Agreement.

7.6.2 Objection Procedures: Any Class Member who does not opt-out but who wishes to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's full name and the last four digits of Class Member's Social Security number; (b) provide evidence that the individual is, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e. Tracy v. Von Housen's Sacramento, Inc., et al.*, 34-2020-00282778) (e) be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.5. The objecting Class Member must also file a notice of intent to appear with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to appear at the final approval hearing.

7.6.3 Dispute Procedures: Any Class Member who disputes the number of Qualifying Workweeks, or assigned subclass(es) on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.5. The Settlement Administrator shall promptly (in no event more than two business days) forward all such disputes to Defendant's Counsel and request that Defendant review the dispute. Defendant's records shall presumptively control unless the Class Member can produce documentation evidencing other periods of employment worked or being paid under a commission/bonus pay plan. If Defendant does agree with submitted information, the Class

1 Member shall be credited or subtracted Qualifying Workweeks and/or reassigned to a different subclass
2 in accordance with their submitted dispute and that final number of Qualified Workweeks and subclass
3 shall govern the calculation of that Class Member's Individual Settlement Payment. If Defendant does
4 not agree with the submitted information, Defendant's Counsel will promptly advise Class Counsel of the
5 dispute, which includes turning over any documentation submitted by the Class Member as part of the
6 dispute. Defendant's Counsel and Class Counsel shall attempt in good faith to resolve any such dispute
7 within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendant's
8 Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator or
9 Court. The Settlement Administrator's determination of the eligibility for and amount of any Individual
10 Settlement Payment shall be binding upon the Settlement Class Member and the Parties.

11 7.6.4 Deficient Opt-Outs, Objections, or Disputes: In the event that a deficient opt-out,
12 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
13 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
14 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
15 the deficiency shall be the end of the Notice Period or 10 days from the date of the deficiency letter,
16 whichever is later.

17 7.7 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
18 to 7.6.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
19 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
20 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

21 7.8 Settlement Administrator Declaration Regarding Notice Period: Within twenty-one (21)
22 days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class Counsel
23 and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and
24 detailed report regarding the statistics and responses of settlement administration to date and all the
25 Settlement Administrators' obligations under Sections 5.8, 5.11 to 5.11.2, and 7.1 to 7.6.4.

26 7.9 Settlement Administrator Payments to Settlement Class Members, Class Counsel and
27 Plaintiff: Immediately after the Final Approval Date and the Court's determination of the amount of
28 attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the

PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Settlement Class Members, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Maximum Settlement Amount to the Settlement Administrator according to the schedule described in Section 5.1. Payment of Settlement Administrator Costs, Attorneys Fees and Costs, and any Enhancement Payment to the Class Representative may be made as sufficient funds are received by the Settlement Administrator. Within seven (7) calendar days of receiving the full Maximum Settlement Amount, the Settlement Administrator shall deliver payment of any remaining amounts for Class Counsels' attorney's fees and costs, the Enhancement Payment payable to Plaintiff, and Settlement Administrator Costs, as well as the 75% portion of the PAGA Payment payable to the LWDA, and payment to Settlement Class Members as required under this Agreement and approved by Court.

7.9.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and costs to Class Counsel unless other method is requested by Class Counsel. Class Counsel shall provide the Settlement Administrator with the pertinent taxpayer identification number and payment instructions after the Final Approval Date.

7.9.2 The Settlement Administrator shall send a check by mail for the Court-approved Enhancement Payment to the Class Representative, care of Class Counsel unless other method is requested by Class Counsel.

7.9.3 Only Settlement Class Members will receive their Individual Settlement Payment.

7.9.4 The Settlement Administrator shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this Agreement. Defendant agree to reasonably cooperate with the Settlement Administrator to the extent necessary to determine the amount of the payroll tax payment required.

7.10 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall issue Individual Settlement Amounts to Settlement Class Members in the form of a check, which shall become null and void if not deposited within one hundred twenty (120) calendar days of issuance. After one hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all

uncashed checks shall be transmitted in accordance with Section 5.8. The Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.11 Settlement Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) days after the last day for Settlement Class Members to cash their settlement checks, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, The LWDA's share of the PAGA Payment, Settlement Administrator Costs, and payment to Settlement Class Members.	Within seven (7) calendar days of the Settlement being fully funded
Last day for Settlement Class Members to cash settlement checks	120 days after issuance of checks to Settlement Class Members
Last day for Settlement Administrator to deliver value of uncashed settlement checks to the Controller of the State of California	Within 14 days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. Plaintiff will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. Plaintiff will request that the Court's preliminary approval

of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members; 4) Preliminarily appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate as to the Class Members.

9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed Agreement.

9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and appropriate to assure effective communication to individual Class Members of information about their rights and obligations under this Agreement.

9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts.

9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)

1 Approving the Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
2 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

3 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
4 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
5 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
6 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
7 Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and
8 locating Settlement Class Members entitled to payments under the Agreement and assuring delivery of
9 such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the
10 Settlement Administrator as needed or requested in completing the distribution of any uncashed or
11 unclaimed amounts for Settlement Class Members, as specified above; 4) Class Counsel, in conjunction
12 with the Settlement Administrator, will certify to the Court completion of all payments required to be
13 made by this Agreement.

14 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
15 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
16 and PAGA Settlement and Final Judgment.

17 9.4 Notice to LWDA: Plaintiff agrees to provide notice to the Labor and Workforce
18 Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

19 **10. MISCELLANEOUS TERMS**

20 10.1 Defendant's Right to Terminate Settlement Based on Opt-Outs: If, after the Response
21 Deadline and prior to the Final Approval Date, five percent (5%) or more of the Class Members have
22 submitted valid and timely written requests for exclusion from the Settlement, Defendant may, at its
23 election, rescind the Agreement and all actions taken in its furtherance will be thereby null and void.
24 Defendant must exercise this right of rescission, in writing, to Class Counsel, within ten (10) calendar
25 days after the Settlement Administrator notifies the Parties of the total number of opt-outs. If the option
26 to rescind is exercised, then any Settlement Administrator Costs incurred up to the date or as a result of
27 the termination shall be paid by Defendant and the Parties shall proceed in all respects as if this Agreement
28 had not been executed.

1 10.2 Escalator Clause: Defendant has represented that there are no more than 21,541 aggregate
2 workweeks during the Covered Period. In the event the number of workweeks during the Covered
3 Period is more than 23,685 (*i.e.*, greater than 10% more than 21,541), then the Maximum Settlement
4 Amount shall increase by the same percentage increase. If the actual number of workweeks is 23,685
5 or less, then the Maximum Settlement Amount shall not be increased.

6 10.3 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
7 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
8 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
9 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
10 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
11 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
12 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
13 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
14 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
15 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
16 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
17 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
18 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
19 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
20 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
21 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
22 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
23 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
24 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
25 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
26 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
27 BY THIS AGREEMENT.

1 10.4 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
2 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
3 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
4 and discharged in this Agreement.

5 10.5 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
6 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
7 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
8 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

9 10.6 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
10 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
11 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

12 10.7 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval Date,
13 judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties
14 to enforce the terms therein pursuant to California Rule of Court 3.769(h).

15 10.8 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
16 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
17 execution of such other documents and the taking of such other action as may reasonably be necessary to
18 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
19 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
20 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

21 10.9 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
22 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
23 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
24 Complaint, the representative character of the Action, the validity of any of the claims that were or could
25 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
26 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
27 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or
28 any other person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing

toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation.

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

To Plaintiff and the Class:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

To Defendant:

Gregory C. Cheng
Carolyn B. Hall
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One Embarcadero Center, Suite 900
San Francisco, CA 94111
Telephone : (415) 442-4810
Facsimile: (415) 422-4870

10.11 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not 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.

10.12 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement. This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

10.13 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or the Maximum Settlement Amount except as expressly provided in this Agreement. The Parties stipulate and agree that the Sacramento

County Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6 and that the prevailing party in any action necessary to enforce the terms of the Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

10.14 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

10.15 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement.

10.16 Class Member Signatories: Because the Action has not yet been certified, and 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 Agreement, this Agreement may be executed on behalf of all Class Members by the Class Representative.

10.17 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and effect of originals.

10.18 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of California without giving effect to that State's choice of law principles.

1 10.19 Headings and Captions: Section titles or captions contained in the Agreement are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
3 this Agreement, or any provision thereof.

4 10.20 No Retaliation or Discouragement: The Parties agree they will take no action that could be
5 construed as retaliation against any Class Members for participating or seeking to participate in this class
6 action settlement. The Parties will not discourage any class member from participating or seeking to
7 participate in this class action settlement. The Parties and their counsel will cooperate with each other
8 and use their best efforts to implement the Settlement.

9 10.21 Integrated Agreement: This Agreement sets forth the entire understanding between the
10 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement which has
12 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
13 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
14 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

15 10.22 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
16 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

17 10.23 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
18 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
19 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

20 10.24 Waiver of Compliance: No waiver of any condition or covenant contained in this
21 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
22 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

23 10.25 No Further Claims: Other than the instant Action, Plaintiff and Class Counsel represent that
24 they have no current intention of asserting any other claims against Defendant in any judicial or
25 administrative forum. Plaintiff and Plaintiff's Counsel represent that they do not currently know of or
26 represent any persons (other than the representation of putative Class Members in this Action) who have
27 expressed any interest in pursuing litigation or seeking any recovery against Defendant. The Parties
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1 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
2 attorneys, as of the day and year herein set forth.

3 For Plaintiff:

4 Date: 3/26/2021

5 
Steve Tracy

6
7 For Defendant:

8 Date: 3/30/2021

9 
By: Kirk Minami
For Von Housen's Sacramento, Inc.

10
11
12
13 APPROVED AS TO FORM

Shimoda Law Corp.

14
15 Dated: 3/29/2021

16 By: 
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and Class Members

17
18 APPROVED AS TO FORM

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

19
20 Dated: March 31, 2021

21 By: 
Gregory C. Cheng
Carolyn B. Hall
Attorneys for Defendant

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46107835.5

EXHIBIT 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

STEVE TRACY, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., et al.,

Defendant.

Case No. **34-2020-00282778**

CLASS ACTION

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

ATTENTION: all non-exempt employees who have or continue to work for Defendant Von Housen's Sacramento, Inc. in California from August 4, 2016 through _____ (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU AND OTHER CLASS MEMBERS. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on _____, you are receiving notice of a proposed class action settlement between Plaintiff Steve Tracy ("Plaintiff" or "Class Representative"), and Defendant Von Housen's Sacramento, Inc. ("Defendant") on behalf of Class Members as defined above. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked _____ workweeks during the applicable Covered Period (as defined below) within [Subclass 1/Subclass 2], which means your share of the settlement proceeds is estimated to be _____. Based on Defendant's records, your dates of employment in a non-exempt position are _____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On August 4, 2020, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of Sacramento on behalf of himself and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2020-00282778. The Covered Period is August 4, 2016 through _____ (the "Covered Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendant violated California law by failing to pay overtime, failure to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursement expenses, violation of Labor Code section 558, failure to maintain accurate records, and failure to pay wages in a timely manner. Defendant has denied all of Plaintiff's allegations. Specifically, Defendant alleges that some or all of the Class Members are subject to a mandatory arbitration agreement, and such agreement prohibits and/or does not expressly authorize Plaintiff and/or Class Members to maintain such an action against Defendant on a class, collective and/or representative basis in arbitration. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation

process. Despite agreeing to and supporting the Agreement, Defendant continues to deny the factual and legal allegations in the Action and believes it has valid defenses to all of Plaintiff's claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the class or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff. The Settlement is not an admission of any wrongdoing by Von Housen's Sacramento, Inc. or any indication that any law was violated. Defendant has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit a timely and valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant agrees to pay a total sum of Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00) ("Maximum Settlement Amount"). Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Maximum Settlement Amount, which equals \$262,500, attorneys' costs not to exceed \$17,500, Settlement Administrator Costs estimated not to exceed \$12,500, employer tax contributions, Class Representative's Enhancement Payment of \$15,000, and \$7,500 for alleged PAGA penalties (the California Labor & Workforce Development Agency's 75% share of \$10,000 allocated for PAGA civil penalties), which will result in a "Net Settlement Amount" for distribution to all Class Members. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Covered Period within their assigned subclass. The Settlement will be funded in two installments, one in the amount of \$500,000 payable within ten (10) business days of the Court granting final approval, and one within ninety (90) calendar days after the first installment is paid that covers all remaining amounts necessary to completely fund the settlement. Payments to Class Members will occur after the Settlement is fully funded.

The number of weeks you worked during the Covered Period, your assigned subclass, and your estimated share of the Net Settlement Amount ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks and/or subclass, and on the distributions finally approved and allocated by the Court.

B. Individual Settlement Amounts and Allocation Between Class Members

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Class Member who does not opt out of the settlement. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 80% for disputed interest, statutory penalties, civil penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 20% for disputed wages for which IRS Forms W-2 will issue.

Payment to Class Members who do not opt out will not require the submission of a claim form. For payment allocation purposes only, Class Members will be divided into two subclasses: Subclass 1: Class Members working in a position subject to a commission/bonus pay plan; and Subclass 2: all Class Members not falling into Subclass 1, *i.e.*, hourly-paid non-exempt positions not subject to a commission/bonus pay plan. Subclass 1 shall be allocated 70% of the Net Settlement Amount and Subclass 2 shall be allocated 30% of the Net Settlement Amount. Each Class Member's proportionate share will be determined by dividing their total weeks worked within their respective subclass during the Covered Period by the total weeks worked by all Class Members within the subclass during the Covered Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek/Subclass Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of

workweeks worked by an individual Class Member or their assigned subclass. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks and/or subclass must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided. The Settlement Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out, the Agreement contains the following release:

Upon the Settlement receiving final approval by the Court, provided the Settlement is ultimately fully funded, all Class Members who do not opt out will be deemed to fully, finally and forever released Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, owners, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, and all persons acting under, by, through, or in concert with any of them, and each of them ("Released Parties") from all causes of action and factual or legal theories that were alleged in the Complaint or reasonably could have been alleged based on the facts, causes of action, and legal theories contained in the Complaint, including all of the following claims for relief: (a) failure to pay overtime wages; (b) failure to pay minimum wages; (c) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest breaks, and to properly provide premium pay in lieu thereof; (e) waiting time penalties for untimely pay during employment and untimely final pay; (f) improper and/or inaccurate wage statements; (g) failure to reimburse business expenses; (h) failure to keep complete or accurate payroll records; (i) unfair business practices based thereon; (i) civil penalties under the Labor Code Private Attorneys General Act ("PAGA") based thereon; (j) any other claims or penalties under the wage and hour laws pleaded in the Action; and (k) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the Action, and the California Unfair Competition Law ("Released Claims"). The period of the Release shall extend to the limits of the Covered Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

Class Members will be bound by a release of all claims and causes of action falling within the definition of "Released Claims" (above), whether known or unknown, and irrespective of the factual or legal basis for such claims. However, to be clear, the scope of the release is limited to the Released Claims. Class Members may hereafter discover facts or legal arguments in addition to or different from those they know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement, Class Members shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released Claims. The period of the release shall extend to the limit of the Covered Period. The *res judicata* effect of the Judgment will be the same as that of the release. Class Members specifically acknowledge that they are aware of and familiar with the provisions of Section 1542 of the Civil Code, which provides as follows: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendant has agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Maximum Settlement Amount which equals \$262,500, and attorneys' costs not to exceed \$17,500. Class Counsel's attorneys' fees and costs will be paid and deducted from the Maximum Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek and assigned subclass information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation or your assigned subclass, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement. **It is your responsibility to ensure that the Settlement Administrator has your current mailing address and telephone number on file. If the Court grants final approval of the Settlement, your Individual Settlement Amount will be mailed to the last known address that the Settlement Administrator has on file for you.**

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e. Tracy v. Von Housen’s Sacramento, Inc.*, 34-2020-00282778); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than _____. If you submit a request to opt out which is not postmarked by _____, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the class settlement payment.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e. Tracy v. Von Housen’s Sacramento, Inc.*, 34-2020-00282778) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Settlement Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, and provided the Settlement is fully funded, each and every Class Member who does not opt out of the Settlement, will release the Released Parties from the Released Claims described above. In other words, if you were employed as a Class Member by Defendant and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 40, 813 6th St. Sacramento, CA 95814 on [redacted] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Gregory C. Cheng
Carolyn B. Hall
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One Embarcadero Center, Suite 900
San Francisco, CA 94111
Telephone : (415) 442-4810
Facsimile: (415) 422-4870
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

FILED/ENDORSED

NOV 20 2020

By: R. San Miguel
Deputy Clerk

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 Shimoda Law Corp.
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff STEVE TRACY,
10 on behalf of himself and similarly situated employees

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

STEVE TRACY, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., a
California Corporation;
GEORGE GRINZEWITSCH, JR., an
individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00282778

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

FIRST AMENDED CLASS ACTION COMPLAINT

1 Plaintiff STEVE TRACY ("Plaintiff"), on behalf of himself and all other similarly situated
2 employees, hereby files this Complaint against Defendants VON HOUSEN'S SACRAMENTO,
3 INC., a California Corporation; GEORGE GRINZEWITSCH, JR., an individual; and DOES 1 to
4 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief,
5 Plaintiff allege the following:

6 INTRODUCTION

7 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
8 Plaintiff for failure to pay minimum wages, failure to pay overtime wages, meal period violations, rest
9 period violations, wage statement violations, failure to timely pay final wages, failure to reimburse
10 expenses, and unfair competition.

11 JURISDICTION AND VENUE

12 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 7.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
16 Defendants reside in Sacramento County. In addition, some of the wrongful acts and violations of law
17 asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in
18 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
19 (1984).

20 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
21 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
22 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
23 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
24 approximately July 31, 2020. Plaintiff provided facts and legal bases for his claims within the notice to
25 the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff
26 submitted the \$75.00 filing fee. The July 31, 2020 notice was also sent via certified mail to Defendants
27 on the same day. Plaintiff is informed and believes, that to date, the LWDA has not provided any
28 response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and believes that he

1 has exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring
2 this action on behalf of himself and all similarly situated employees. See Cal. Labor Code §
3 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
4 (2005).

5
6 **PARTIES**

7 5. STEVE TRACY is an individual over the age of eighteen (18) and is a resident of the
8 State of California.

9 6. On information and belief, Plaintiff alleges, VON HOUSEN'S SACRAMENTO,
10 INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the
11 owner and operator of an industry, business and/or facility doing business in the State of California.

12 7. On information and belief, Plaintiff alleges, that GEORGE GRINZEWITSCH, JR is
13 an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff
14 further allege(s) that GEORGE GRINZEWITSCH, JR is an owner, director, officer, and/or
15 managing agent of VON HOUSEN'S SACRAMENTO, INC. responsible for causing the violations
16 outlined in the First through Seventh and Ninth causes of action. As such GEORGE
17 GRINZEWITSCH, JR is individually liable pursuant to California Labor Code section 558.1.

18 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
19 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
20 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
21 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
22 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
23 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
24 Plaintiff.

25 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
26 other Defendants and was acting within the course and scope of such agency or employment. The
27 Defendants are jointly and severally liable to Plaintiff.

28 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
were members of and/or engaged in a joint employment, joint venture, partnership and common

1 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
2 joint venture, partnership and common enterprise.

3 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint
4 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

5 12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
6 wrongs, complaints, injuries and/or damages alleged in this Complaint.

7 **CLASS ALLEGATIONS**

8 13. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
9 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
10 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

11 all non-exempt employees who have or continue to work for Defendants
12 in California from August 4, 2016 to the present.

13 14. This action has been brought and may be properly maintained as a class action,
14 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
15 defined community of interests in the litigation and the proposed class is easily ascertainable.

16 (a) **Numerosity**: The putative class is so numerous that the individual joinder of all members
17 is impracticable under the circumstances of this case. While the exact number of class
18 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
19 Defendants have employed as many as fifty (50) individuals falling within the above
20 stated class definition throughout the State of California during the applicable statute of
21 limitations, who were subjected to the policies and practices outlined in this Complaint.
22 As such, joinder of all members of the putative class is not practicable.

23 (b) **Common Questions Predominate**: Common questions of law and fact exist as to all
24 members of the putative class and predominate over questions that affect only individual
25 members of the class. These common questions of law and fact include, without
26 limitation, the following:

- 27 (1) Whether Defendants had a policy and practice to pay all overtime wages;
28 (2) Whether Defendants had a policy and practice to pay all minimum wages;

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(3) Whether Defendants had a policy and practice to separately compensate Plaintiff and putative class members for time spent during non-productive, such as rest periods, meetings, trainings, and other activated that did not earn wages under Defendants compensation system but were still required of Plaintiff and putative class members;

(4) Whether Defendants authorized and permitted all meal periods;

(5) Whether Defendants authorized and permitted all rest periods;

(6) Whether Defendants had a policy and practice to reimburse Plaintiff and putative class members for the use of their cellphones;

(7) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and

(8) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who were not compensated for time spent during rest periods, meetings, and trainings, and other non-productive time, were not authorized and permitted to take all meal and paid rest periods, and were not reimbursed for the personal use of their cellphones resulting in unpaid minimum and overtime wages, meal and rest period violations, wage statement violations, waiting time penalties, and unfair competition. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the

1 putative class as Plaintiff has no interests that are adverse to those of putative class
2 members. Additionally, Plaintiff has retained counsel who has substantial experience in
3 complex civil litigation and wage and hour matters.

4 (e) Superiority: A class action is superior to other available means for the fair and efficient
5 adjudication of the controversy since individual joinder of all members of the putative
6 class is impracticable. Class action treatment will permit a larger number of similarly
7 situated persons to prosecute their common claims in a single forum simultaneously,
8 efficiently, and without the unnecessary duplication of effort and expense that numerous
9 individual actions would engender. Further, as damages suffered by each individual
10 member of the class may be relatively small, the expenses and burden of the individual
11 litigation would make it difficult or impossible for individual members of the class to
12 redress the wrongs done to them, and an important public interest will be served by
13 addressing the matter as a class action. The cost to the court system of adjudication of
14 such individualized litigation would be substantial. Individualized litigation would also
15 present the potential for inconsistent or contradictory judgments.

16 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
17 management of this action that would preclude its maintenance as a class action.

18 GENERAL ALLEGATIONS

19 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully
20 set forth herein.

21 17. Defendants run car dealerships where Plaintiff worked from approximately March 2000
22 to June 13, 2020. Defendants paid Plaintiff and similarly situated employees under a base unit pay and
23 additional bonus unit pay plan. The pay plans were based on a tiered system. Each of the pay plans
24 included the payment of flat amounts that corresponded the number of units sold by Plaintiff and
25 similarly situated employees. For example, if Plaintiff sold 1-6 cars during the month, he would earn
26 base unit pay of \$1,000.00 and would receive additional bonus unit pay of either \$150 or \$100 per car
27 depending on whether the cars were new or used. If Plaintiff sold 8-9.5 cars during the month, he would
28 earn base unit pay of \$1,750.00 and would receive additional bonus unit pay of either \$300 or \$250

1 depending on whether the cars were new or used. There were additional factors affecting the amount of
2 unit pay that would result in either no unit pay earning for the work performed in selling a car or
3 negative unit pay earnings that would count against the unit value of other sales in the same or future
4 pay periods. The factors included, but were not limited to, customer service ratings of a customer's
5 overall experience at the dealership (not just limited to Plaintiff or one other similarly situated
6 employees) or the amount sold below the manufacturer's suggested retail price.

7 18. In the event that Plaintiff or other similarly situated employees had no unit pay earnings
8 as a result of Defendants' compensation system, Defendants would pay a \$1,000 monthly draw. Any
9 amounts paid as a draw would be recouped by Defendants from future base unit and bonus unit pay such
10 that Plaintiff and similarly situated employees only earned base unit pay and bonus unit pay when
11 engaged in sales activities that ultimately resulted in a sale. Because some sales activity resulted in
12 negative base unit and bonus unit pay under Defendants compensation system, sales activity in the
13 morning that would have resulted in positive base and/or bonus unit pay could end up being completely
14 uncompensated based on a subsequent sales activity later in the afternoon that created a negative base
15 and/or bonus unit pay calculation. Plaintiff and similarly situated employees spent approximately 50%
16 of their time on activities that were uncompensated either due to a lack of sales, negative sales that
17 eliminated prior positive sales activity, or engaging in tasks that did not directly earn additional
18 compensation under Defendants system, but were still suffered or permitted by Defendants.

19 19. Defendants did not pay Plaintiff and similarly situated employees for any non-selling
20 time, such as time spent in meetings, time spent during trainings, time spent learning information about
21 the products being sold, time spent on rest periods, etc. Because of this, Defendants failed to provide
22 paid rest periods and pay Plaintiff and similarly situated employees at least minimum wage for every
23 hour worked.

24 20. Plaintiff and similarly situated employees regularly worked overtime (i.e., over eight
25 hours in a day or forty in a week). However, Defendants did not have any policy or practice to pay
26 overtime wages to Plaintiff and similarly situated employees. Additionally, Defendants did not keep
27 track of any of the hours Plaintiff and similarly situated employees worked, including regular hours,
28 overtime hours, or time spent during meal periods, if any.

1 21. Defendants' failure to pay for all regular and overtime hours worked also resulted in
2 Defendants' failure to pay Plaintiff and similarly situated employees all wages they were owed during
3 the applicable pay period.

4 22. Defendants did not have a policy or practice to authorize Plaintiff and similarly situated
5 employees to take all meal periods and paid rest periods owed to them. Plaintiff and similarly situated
6 employees did not receive a meal period or began their first meal period before completion of their fifth
7 hour worked on multiple occasions. Plaintiff and similarly situated employees also worked over ten
8 hours a day on numerous occasions but were never provided with a second meal period. In addition to
9 the lack of policies authorizing meal periods and rest periods for every four hours worked or major
10 fraction thereof, Defendants supervisors regularly made comments to discourage Plaintiff and similarly
11 situated employees from taking meal and rest periods and told them to continue working rather than take
12 all meal and rest periods owed. Furthermore, as a result of Defendants compensation system, Plaintiff
13 and similarly situated employees were not able to take any paid rest periods because rest periods were
14 unpaid as non-productive time. No separate compensation for time spent on rest periods were given.
15 Defendants did not pay Plaintiff and Similarly situated employees any meal or rest period premiums.

16 23. The policies and practices described above resulted in Plaintiff and similarly situated
17 employees being owed wages at the time of their separation or termination that went unpaid by
18 Defendants.

19 24. Defendants failed to issue Plaintiff and similarly situated employees wage statements that
20 stated their total hours worked, and the number of regular and overtime hours they worked and
21 corresponding applicable hourly rates, the correct amount of gross and net wages, and amounts for meal
22 and rest period premiums.

23 25. Plaintiff and similarly situated employees regularly used their personal cellphones for
24 work to call, speak with, and receive calls from prospective customers. Defendants did not have any
25 policy or practice to reimburse similarly situated employees for this expense. Defendants were aware
26 and encouraged the use of Plaintiff's and similarly situated employees personal cell phones. There were
27 only a small number of phones available at the office location that were inside individual offices. These
28 offices were regularly occupied by IT employees, so Plaintiff and similarly situated employees could not

1 access them for use of phones. Instead, they had to use their personal cell phones in order to complete
2 company business.

3
4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**
6 **FAILURE TO PAY OVERTIME WAGES**
7 **(As to all Defendants)**

8 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
9 set forth herein.

10 27. During the period Plaintiff was employed by Defendants, Defendants were required to
11 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
12 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
13 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 7, section (3)(A);*
14 *Cal. Lab. Code §§ 510, 1194.*

15 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
16 and/or forty (40) hours per week on multiple occasions while employed by Defendants. However,
17 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
18 worked at their regular rate of pay.

19 29. Plaintiff and similarly situated employees were not exempt from overtime protections
20 employees under the California Wage Orders and Labor Code.

21 30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
22 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
23 the extent pertinent as if set forth here in full.

24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PAY MINIMUM WAGES**
26 **(As to all Defendants)**

27 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
28 set forth herein.

32. For the period preceding the filing of this Complaint, Defendants were required to
compensate Plaintiff and similarly situated employees with at least California's applicable minimum for

every hour worked. See MW-Order 2019; IWC Wage Order, No. 7, section 4(A); Cal. Lab. Code § 1194.

33. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so. Defendants did not pay Plaintiff and similarly situated employees for time spent during rest periods, meetings, trainings, and other non-productive time.

34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully set forth herein.

36. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 7, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

38. California Labor Code section 512 and Wage Order No. 7 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

39. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated

1 employees to take their first meal period before the completion of their fifth hour of work and failed
2 to allow Plaintiff and similarly situated employees to take their second meal period before the
3 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
4 rights to all meal periods throughout their employment.

5 40. Defendants further failed to pay Plaintiff and similarly situated employees the
6 applicable meal period premiums for any such missed meal breaks.

7 41. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
8 employees have been damaged as stated in the section below entitled "DAMAGES," which is
9 incorporated here to the extent pertinent as if set forth here in full.

10
11 **FOURTH CAUSE OF ACTION**
REST PERIOD VIOLATIONS
(As to all Defendants)

12 42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully
13 set forth herein.

14 43. An employer must provide an employee a rest period in accordance with the
15 applicable Wage Order and California Labor Code section 226.7.

16 44. California Labor Code section 226.7 and Wage Order No. 7, section 12(A) require an
17 employer to provide a paid rest period of not less than ten (10) minutes for each work period of more
18 than four (4) hours or a major fraction thereof.

19 45. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
20 situated employees to take all rest periods of at least ten (10) minutes for each work period that they
21 worked more than four (4) hours or a major fraction thereof. Moreover, for those rest periods that
22 were received, they were unpaid.

23 46. Defendants further failed to pay Plaintiff and similarly situated employees the
24 applicable rest period premiums for any such missed rest periods.

25 47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
26 employees have been damaged as stated in the section below entitled "DAMAGES," which is
27 incorporated here to the extent pertinent as if set forth here in full.
28 //

**FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)**

48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully set forth herein.

49. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. Plaintiff and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

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1 51. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
2 employees have been damaged as stated in the section below entitled "DAMAGES," which is
3 incorporated here to the extent pertinent as if set forth here in full.

4
5 SIXTH CAUSE OF ACTION
6 WAITING TIME PENALTIES
7 (As to all Defendants)

8 52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully
9 set forth herein.

10 53. An employer must pay an employee who is terminated all unpaid wages immediately
11 upon termination. See Cal. Lab. Code § 201.

12 54. An employer must pay an employee who resigns all unpaid wages within seventy-two
13 (72) hours of their resignation. See Cal. Lab. Code § 202.

14 55. Plaintiff and similarly situated employees did not receive all wages, including minimum
15 and overtime wages, meal and rest period premiums at their termination or within the required time after
16 their separation from employment.

17 56. An employer who willfully fails to pay an employee wages in accordance with California
18 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
19 days. See Cal. Lab. Code § 203.

20 57. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
21 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
22 and similarly situated employees took unpaid rest periods and spent time during meetings and trainings
23 that were uncompensated. Such conduct shows Defendants had knowledge of earned, but unpaid wages
24 at the time of separation, yet Defendants still refused to pay the remaining wages owed.

25 58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
26 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
27 thirty (30) days for Defendants' failure to pay all wages due.

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**SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)**

59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully set forth herein.

60. California Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

61. Defendants required Plaintiff and similarly situated employees to use their personal cellphones but failed to reimburse them for such use.

62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to VON HOUSEN'S SACRAMENTO, INC. and DOES 1 to 100)**

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

64. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

65. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, or reimbursed for business expenses, during their employment or any time thereafter.

66. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

1 67. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
2 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
3 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
4 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an
5 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

6
7 **NINTH CAUSE OF ACTION**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **(As to all Defendants)**

10 68. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 67 as though fully
11 set forth herein.

12 69. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
13 following provisions of the Labor Code in their dealings with him and other similarly situated current
14 and former employees:

- 15 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay
16 Overtime Wages)
- 17 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay
18 Minimum Wages)
- 19 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 20 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
21 Statements)
- 22 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 23 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
24 Work in Any Industrial Welfare Commission Order)
- 25 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order 7, §§ 11(A) and 11(B)
26 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 27 • Violation of Labor Code § 226.7; IWC Wage Order 7, § 12(A) (Failure to Provide
28 Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.3, 1174, 1198; IWC Wage Order 7, § 7(A) (Failure to
Maintain Accurate Records)

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6. As to the Fifth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

- a. An amount to be proven at trial;
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

8. As to the Ninth Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

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2 9. For such other and further relief as this Court may deem just and proper,
3 including, but not limited to:

- 4 a. Wages as proved at trial;
5 b. Injunctive and Declaratory relief;
6 c. Attorney's fees and costs as provided for by law; and
7 d. Interest.

8 Dated: November 12, 2020

9 Shimoda Law Corp.

10 By: 

11 Galen T. Shimoda
12 Justin P. Rodriguez
13 Brittany V. Berzin
14 Attorneys for Plaintiff
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1 Tracy v. Von Housen's Sacrametno, Inc.
2 Sacramento County Superior Court of California 34-2020-00282778

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On November 20, 2020, I served the following documents on the party below:

- 9 • First Amended Complaint for Damages

10 Gregory C. Cheng (SBN: 226865)
11 Heidi G. Kim (SBN: 306641)
12 Ogletree, Deakins, Nash, Smoak & Stewart,
13 P.C.
14 One Market Plaza, Ste. 1300
15 San Francisco, CA 94105
16 Telephone: (415) 536-3406
17 Facsimile: (415) 442-4870
18 Email: Gregory.cheng@ogletree.com
19 Heidi.kim@ogletree.com

20 [XXX]

[By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

21 []

[By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

22 []

[By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

23 []

[By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: UPS.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on November 20, 2020, at Elk Grove,
26 California

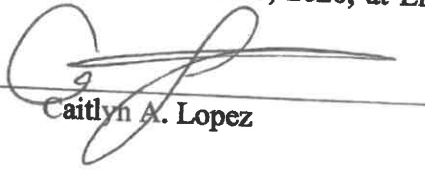
27 
28 Caitlyn A. Lopez

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

July 31, 2020

For Online Filing:

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

Re: *Tracy v. Von Housen's Sacramento, Inc.*

Dear Labor Commissioner,

As counsel for Steve Tracy ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Von Housen's Sacramento, Inc.
1810 Howe Avenue
Sacramento, CA 95825

George Grinzewitsch, Jr.
1810 Howe Avenue
Sacramento, CA 95825

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Von Housen's Sacramento, Inc. and George Grinzewitsch, Jr. ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt employees who have or continue to work for Defendants in California from one (1) year prior to the filing of this notice to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Defendants run car dealerships where Plaintiff worked from approximately March 2000 to June 13, 2020. Defendants paid Plaintiff and Aggrieved Employees under a base unit pay and additional bonus unit pay plan. The pay plans were based on a tiered system. Each of the pay



plans included the payment of flat amounts that corresponded the number of units sold by Plaintiff and Aggrieved Employees. For example, if Plaintiff sold 1-6 cars during the month, he would earn base unit pay of \$1,000.00 and would receive additional bonus unit pay of either \$150 or \$100 per car depending on whether the cars were new or used. If Plaintiff sold 8-9.5 cars during the month, he would earn base unit pay of \$1,750.00 and would receive additional bonus unit pay of either \$300 or \$250 depending on whether the cars were new or used. There were additional factors affecting the amount of unit pay that would result in either no unit pay earning for the work performed in selling a car or negative unit pay earnings that would count against the unit value of other sales in the same or future pay periods. The factors included, but were not limited to, customer service ratings of a customer's overall experience at the dealership (not just limited to Plaintiff or one other Aggrieved Employees) or the amount sold below the manufacturer's suggested retail price.

In the event that Plaintiff or other Aggrieved Employees had no unit pay earnings as a result of Defendants' compensation system, Defendants would pay a \$1,000 monthly draw. Any amounts paid as a draw would be recouped by Defendants from future base unit and bonus unit pay such that Plaintiff and Aggrieved Employees only earned base unit pay and bonus unit pay when engaged in sales activities that ultimately resulted in a sale. Because some sales activity resulted in negative base unit and bonus unit pay under Defendants' compensation system, sales activity in the morning that would have resulted in positive base and/or bonus unit pay could end up being completely uncompensated based on a subsequent sales activity later in the afternoon that created a negative base and/or bonus unit pay calculation. Plaintiff and Aggrieved Employees spent approximately 50% of their time on activities that were uncompensated either due to a lack of sales, negative sales that eliminated prior positive sales activity, or engaging in tasks that did not directly earn additional compensation under Defendants system, but were still suffered or permitted by Defendants.

Defendants did not pay Plaintiff and Aggrieved Employees for any non-selling time, such as time spent in meetings, time spent during trainings, time spent learning information about the products being sold, time spent on rest periods, etc. Because of this, Defendants failed to provide paid rest periods and pay Plaintiff and Aggrieved Employees at least minimum wage for every hour worked.

Plaintiff and Aggrieved Employees regularly worked overtime (i.e., over eight hours in a day or forty in a week). However, Defendants did not have any policy or practice to pay overtime wages to Plaintiff and Aggrieved Employees. Additionally, Defendants did not keep track of any of the hours Plaintiff and Aggrieved Employees worked, including regular hours, overtime hours, or time spent during meal periods, if any.

Defendants' failure to pay for all regular and overtime hours worked also resulted in Defendants' failure to pay Plaintiff and Aggrieved Employees all wages they were owed during the applicable pay period.



Defendants did not have a policy or practice to authorize Plaintiff and Aggrieved Employees to take all meal periods and paid rest periods owed to them. Plaintiff and Aggrieved Employees did not receive a meal period or began their first meal period before completion of their fifth hour worked on multiple occasions. Plaintiff and Aggrieved Employees also worked over ten hours a day on numerous occasions but were never provided with a second meal period. In addition to the lack of policies authorizing meal periods and rest periods for every four hours worked or major fraction thereof, Defendants supervisors regularly made comments to discourage Plaintiff and Aggrieved Employees from taking meal and rest periods and told them to continue working rather than take all meal and rest periods owed. Furthermore, as a result of Defendants compensation system, Plaintiff and Aggrieved Employees were not able to take any paid rest periods because rest periods were unpaid as non-productive time. No separate compensation for time spent on rest periods were given. Defendants did not pay Plaintiff and Aggrieved Employees any meal or rest period premiums.

The policies and practices described above resulted in Plaintiff and Aggrieved Employees being owed wages at the time of their separation or termination that went unpaid by Defendants.

Defendants failed to issue Plaintiff and Aggrieved Employees wage statements that stated their total hours worked, and the number of regular and overtime hours they worked and corresponding applicable hourly rates, the correct amount of gross and net wages, and amounts for meal and rest period premiums.

Plaintiff and Aggrieved Employees regularly used their personal cellphones for work to call, speak with, and receive calls from prospective customers. Defendants did not have any policy or practice to reimburse Aggrieved Employees for this expense. Defendants were aware and encouraged the use of Plaintiff's and Aggrieved Employees personal cell phones. There were only a small number of phones available at the office location that were inside individual offices. These offices were regularly occupied by IT employees, so Plaintiff and Aggrieved Employees could not access them for use of phones. Instead, they had to use their personal cell phones in order to complete company business.

George Grinzewitsch was an officer, director, shareholder, and/or managing agent of Defendants responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead

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B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 7, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 7, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 7, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 7, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.



**Count Four – Violation of Labor Code § 226.7 and Wage Order No. 7, § 12(A)
(Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)**

Labor Code section 226.7 and Wage Order No. 9, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take all legally compliant rest periods owed to them pursuant to California law. Moreover, any rest periods Plaintiff and Aggrieved Employees did receive were unpaid. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including regular and overtime wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Seven – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of



the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for cellphone use by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count Eight – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. George Grinzewitsch was an officer, director, shareholder, and/or managing agent of Defendants responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Nine – Violation of Labor Code §§ 226.3, 1174, 1198 and Wage Order No. 7(A) (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees’ wage records and hours worked. This was against the law.

Labor Code section 1198 provides the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The records requirement in Wage Order No. 7, § 7(A) is a “standard condition of labor fixed by the commission.” See Cal. Labor Code § 1198. It provides, “[e]very 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 . . . and total daily hours worked shall also be recorded. . . .” and “Total hours worked in the payroll period and applicable rates of pay. . . .” See Wage Order No. 7, § 7(A)(3), (5). Defendants failed to keep accurate records in compliance with Wage Order



No. 7, § 7(A) and Labor Code § 1198. Defendants failed to maintain these records. This was against the law.

Count Ten – Violation of Labor Code §§ 204, 210 (Failure to Pay Wages in a Timely Manner)

Labor Code section 204 requires wages to be paid twice during each calendar month on paydays designated in advance by the employer as regular paydays. Labor Code section 204 further requires that semimonthly paychecks include the wages earned during that pay period. *See Peabody v. Time Warner Cable, Inc.*, 59 Cal.4th 662, 669 (2014). Labor Code section 210 allows for employees to seek penalties, including unpaid wages. Here, Defendants failed to provide Plaintiff and Aggrieved Employees all wages they were owed during the applicable pay period. This was in violation of the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Justin P. Rodriguez

cc: Client via e-mail

1 *Tracy v. Von Housen's Sacramento, Inc.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Melissa A. Phillips, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On July 31, 2020, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9
10 Von Housen's Sacramento, Inc.
1810 Howe Avenue
Sacramento, CA 95825

George Grinzewitsch, Jr.
1810 Howe Avenue
Sacramento, CA 95825

11 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
12 and processing of correspondence for mailing with the United States Postal
13 Service and that each day's mail is deposited with the United States Postal
14 Service that same day in the ordinary course of business. On the date set forth
15 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

16 [] [By Personal Service] By personally delivering a true copy thereof to the office
17 of the addressee above.

18 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

19 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
20 personally delivered via the following overnight courier service: _____.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct, and that this declaration was executed on July 31, 2020, at Elk Grove, California.

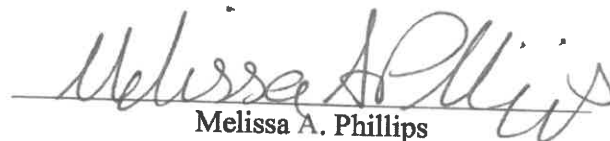
23
24 
25 Melissa A. Phillips
26
27
28

EXHIBIT D



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	12900	Prepared By:	Michael Sutherland
Estimate Date:	2/8/2021	Direct Dial #	321-223-5067
		Email:	msutherland@simpluris.com

Attorney/Client: Plaintiff Attorney
Firm: **Justin Rodriguez**
Shimoda Law

Attorney/Client: Defense Attorney
Firm:

Case Name: Tracy v. Von Housen's: All In Settlement

Anticipated Total Cost	\$7,949
Capped Fee*	\$8,000

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	280	Undeliverable Rate:	20%
Response Rate:	1%	Call Rate:	0%
Mailing Document Language:	English	Fund Distribution:	Simpluris
Reminder Postcard:	No	Redistribution:	No
Unclaimed Funds:	Cy Pres	State(s):	Single

Case Setup

Data Compilation: Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	6	\$750.00
Database Manager - Initial Data Analysis	\$140.00	6	\$840.00
		Total	\$1,590.00

Notification

Notice Packet: 5 pg Notice, - Double Sided - English

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.25	280	\$350.00
Postage	\$0.42	280	\$117.60
NCOA/CASS/LACS	\$75.00	1	\$75.00
Undeliverable Processing	\$0.25	56	\$14.00
Skip Trace RUM	\$2.00	56	\$112.00
Remail Notice	\$1.50	48	\$71.40
Remail Postage	\$0.42	48	\$19.99
Mailing Supervisor	\$50.00	1	\$50.00
		Total	\$809.99

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	0	\$0.00
800 # Charges	\$0.10	0	\$0.00
		Total	\$0.00



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	1	\$125.00
Resolving Mismatched TINs	\$75.00	2	\$150.00
Dispute/Deficiencies - Send One Cure Letter	\$1.50	2	\$3.00
Opt Out Processing	\$1.50	3	\$4.20
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	1	\$125.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$457.20

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members: W2, 1099's - File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	3	\$420.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$3.00	280	\$840.00
Postage	\$0.42	280	\$117.60
Process Returned Checks	\$0.50	3	\$1.40
Skip Trace Search Undeliverable Checks	\$3.00	3	\$8.40
Remail Checks (Includes Postage)	\$3.00	3	\$8.40
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$500.00	1	\$500.00
QSF Reporting/Declaration	\$500.00	1	\$500.00
QSF Annual Tax Preparation Fee	\$1,000.00	1	\$1,000.00
Reissuing Checks/1099's	\$5.00	4	\$21.00
Responding to IRS, State, Agency Inquiries	\$75.00	1	\$75.00
Disbursement Manager	\$125.00	3	\$375.00
Total			\$4,491.80



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc	\$50.00	2	\$100.00
Project Manager-Wrap-up Final Issues	\$125.00	2	\$250.00
Total			\$600.00

Total Case Cost:

\$7,948.99

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 - Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 - Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT E

Date	Description	Amount
7/31/2020	Payment to LWDA - PAGA Filing Fee	\$75.00
7/31/2020	Certified Mail - PAGA Letters to employers	\$8.40
8/3/2020	Service Fee to Court - Complaint, Civil Case Cover Sheet, Summons	\$40.00
8/3/2020	Payment to Court - Complaint Fee Superior Court	\$435.00
8/5/2020	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Lexis Legal Research Fees	\$500.00
8/17/2020	ALS Service Fee - Complaint to Von Housen's Sacramento, Inc.	\$56.90
9/16/2020	Payment to Court - Complex Fees	\$1,000.00
9/16/2020	Service Fee to Court - complex fee	\$40.00
10/30/2020	Postage - Mediation Fee sent via Certified Mail	\$4.05
10/30/2020	Mediation - Mediation Fee	\$7,000.00
11/13/2020	Service Fee to Court - Stipulation to Amend	\$40.00
11/13/2020	Payment to Court - Stipulation to Amend	\$20.00
11/20/2020	Service Fee to Court - First Amended Complaint	\$40.00
1/21/2021	Mediation - Data Analysis Berger Consulting Group	\$3,700.00
2/17/2021	Service Fee to Court - Joint Case Management Statement	\$40.00
Anticipated	Payment to Court - Preliminary Approval Motion	\$60.00
Anticipated	Service Fee to Court - Preliminary Approval Motion	\$40.00
Anticipated	UPS to OC - Preliminary Approval Motion	\$27.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	Service Fee to Court - Final Approval Motion	\$40.00
Anticipated	UPS to OC - Final Approval Motion	\$27.00
Anticipated	Service Fee to Court - Compliance Statement	\$40.00
Total:		\$13,293.35

EXHIBIT F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

STEVE TRACY, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., et al.,

Defendant.

Case No. **34-2020-00282778**

CLASS ACTION

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

ATTENTION: all non-exempt employees who have or continue to work for Defendant Von Housen's Sacramento, Inc. in California from August 4, 2016 through _____ (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU AND OTHER CLASS MEMBERS. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on _____, you are receiving notice of a proposed class action settlement between Plaintiff Steve Tracy ("Plaintiff" or "Class Representative"), and Defendant Von Housen's Sacramento, Inc. ("Defendant") on behalf of Class Members as defined above. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked _____ workweeks during the applicable Covered Period (as defined below) within [Subclass 1/Subclass 2], which means your share of the settlement proceeds is estimated to be _____. Based on Defendant's records, your dates of employment in a non-exempt position are _____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On August 4, 2020, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of Sacramento on behalf of himself and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2020-00282778. The Covered Period is August 4, 2016 through _____ (the "Covered Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendant violated California law by failing to pay overtime, failure to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursement expenses, violation of Labor Code section 558, failure to maintain accurate records, and failure to pay wages in a timely manner. Defendant has denied all of Plaintiff's allegations. Specifically, Defendant alleges that some or all of the Class Members are subject to a mandatory arbitration agreement, and such agreement prohibits and/or does not expressly authorize Plaintiff and/or Class Members to maintain such an action against Defendant on a class, collective and/or representative basis in arbitration. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation

process. Despite agreeing to and supporting the Agreement, Defendant continues to deny the factual and legal allegations in the Action and believes it has valid defenses to all of Plaintiff's claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the class or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff. The Settlement is not an admission of any wrongdoing by Von Housen's Sacramento, Inc. or any indication that any law was violated. Defendant has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit a timely and valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant agrees to pay a total sum of Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00) ("Maximum Settlement Amount"). Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Maximum Settlement Amount, which equals \$262,500, attorneys' costs not to exceed \$17,500, Settlement Administrator Costs estimated not to exceed \$12,500, employer tax contributions, Class Representative's Enhancement Payment of \$15,000, and \$7,500 for alleged PAGA penalties (the California Labor & Workforce Development Agency's 75% share of \$10,000 allocated for PAGA civil penalties), which will result in a "Net Settlement Amount" for distribution to all Class Members. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Covered Period within their assigned subclass. The Settlement will be funded in two installments, one in the amount of \$500,000 payable within ten (10) business days of the Court granting final approval, and one within ninety (90) calendar days after the first installment is paid that covers all remaining amounts necessary to completely fund the settlement. Payments to Class Members will occur after the Settlement is fully funded.

The number of weeks you worked during the Covered Period, your assigned subclass, and your estimated share of the Net Settlement Amount ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks and/or subclass, and on the distributions finally approved and allocated by the Court.

B. Individual Settlement Amounts and Allocation Between Class Members

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Class Member who does not opt out of the settlement. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 80% for disputed interest, statutory penalties, civil penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 20% for disputed wages for which IRS Forms W-2 will issue.

Payment to Class Members who do not opt out will not require the submission of a claim form. For payment allocation purposes only, Class Members will be divided into two subclasses: Subclass 1: Class Members working in a position subject to a commission/bonus pay plan; and Subclass 2: all Class Members not falling into Subclass 1, *i.e.*, hourly-paid non-exempt positions not subject to a commission/bonus pay plan. Subclass 1 shall be allocated 70% of the Net Settlement Amount and Subclass 2 shall be allocated 30% of the Net Settlement Amount. Each Class Member's proportionate share will be determined by dividing their total weeks worked within their respective subclass during the Covered Period by the total weeks worked by all Class Members within the subclass during the Covered Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek/Subclass Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of

workweeks worked by an individual Class Member or their assigned subclass. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks and/or subclass must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than _____. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided. The Settlement Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out, the Agreement contains the following release:

Upon the Settlement receiving final approval by the Court, provided the Settlement is ultimately fully funded, all Class Members who do not opt out will be deemed to fully, finally and forever released Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, owners, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, and all persons acting under, by, through, or in concert with any of them, and each of them ("Released Parties") from all causes of action and factual or legal theories that were alleged in the Complaint or reasonably could have been alleged based on the facts, causes of action, and legal theories contained in the Complaint, including all of the following claims for relief: (a) failure to pay overtime wages; (b) failure to pay minimum wages; (c) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest breaks, and to properly provide premium pay in lieu thereof; (e) waiting time penalties for untimely pay during employment and untimely final pay; (f) improper and/or inaccurate wage statements; (g) failure to reimburse business expenses; (h) failure to keep complete or accurate payroll records; (i) unfair business practices based thereon; (i) civil penalties under the Labor Code Private Attorneys General Act ("PAGA") based thereon; (j) any other claims or penalties under the wage and hour laws pleaded in the Action; and (k) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the Action, and the California Unfair Competition Law ("Released Claims"). The period of the Release shall extend to the limits of the Covered Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

Class Members will be bound by a release of all claims and causes of action falling within the definition of "Released Claims" (above), whether known or unknown, and irrespective of the factual or legal basis for such claims. However, to be clear, the scope of the release is limited to the Released Claims. Class Members may hereafter discover facts or legal arguments in addition to or different from those they know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement, Class Members shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released Claims. The period of the release shall extend to the limit of the Covered Period. The *res judicata* effect of the Judgment will be the same as that of the release. Class Members specifically acknowledge that they are aware of and familiar with the provisions of Section 1542 of the Civil Code, which provides as follows: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendant has agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Maximum Settlement Amount which equals \$262,500, and attorneys' costs not to exceed \$17,500. Class Counsel's attorneys' fees and costs will be paid and deducted from the Maximum Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek and assigned subclass information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation or your assigned subclass, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement. **It is your responsibility to ensure that the Settlement Administrator has your current mailing address and telephone number on file. If the Court grants final approval of the Settlement, your Individual Settlement Amount will be mailed to the last known address that the Settlement Administrator has on file for you.**

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e. Tracy v. Von Housen’s Sacramento, Inc.*, 34-2020-00282778); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than _____. If you submit a request to opt out which is not postmarked by _____, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the class settlement payment.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e. Tracy v. Von Housen’s Sacramento, Inc.*, 34-2020-00282778) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Settlement Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, and provided the Settlement is fully funded, each and every Class Member who does not opt out of the Settlement, will release the Released Parties from the Released Claims described above. In other words, if you were employed as a Class Member by Defendant and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 40, 813 6th St. Sacramento, CA 95814 on [redacted] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Gregory C. Cheng
Carolyn B. Hall
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One Embarcadero Center, Suite 900
San Francisco, CA 94111
Telephone : (415) 442-4810
Facsimile: (415) 422-4870
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT. IF YOU HAVE ANY QUESTIONS, CALL [redacted]

BY ORDER OF THE COURT

EXHIBIT G

1 Tracy v. Von Housen's Sacrametno, Inc.
2 Sacramento County Superior Court of California 34-2020-00282778

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Rylee K. Fonseca, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On April 14, 2021, I served the following documents on the party below:

- 9 • Exhibit List And Exhibits In Support Of Plaintiff's Motion For
10 Preliminary Approval Of Class Action And PAGA Settlement

11 Gregory C. Cheng (SBN: 226865)
12 Heidi G. Kim (SBN: 306641)
13 Ogletree, Deakins, Nash, Smoak & Stewart,
14 P.C.
15 One Embarcadero Center, Ste. 900
16 San Francisco, CA 94111
17 Telephone: (415) 536-3406
18 Facsimile: (415) 442-4870
19 Email: Gregory.cheng@ogletree.com
20 Heidi.kim@ogletree.com

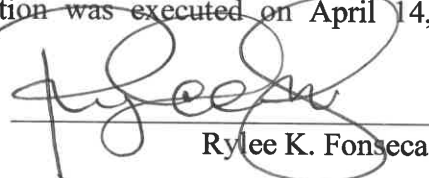
21 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the date set
25 forth above, I served the aforementioned document(s) on the parties in
26 said action by placing a true copy thereof enclosed in a sealed envelope
27 with postage thereon fully prepaid, for collection and mailing on this date,
28 following ordinary business practices, at Elk Grove, California, addressed
as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

29 I declare under penalty of perjury under the laws of the State of California that the foregoing
30 is true and correct, and that this declaration was executed on April 14, 2021 at Elk Grove,
31 California

32 
33 Rylee K. Fonseca

Galen T. Shimoda (Cal. State Bar No. 226752)
 Justin P. Rodriguez (Cal. State Bar No. 278275)
 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
 9401 East Stockton Boulevard, Suite 120
 Elk Grove, CA 95624
 Telephone: (916) 525-0716
 Facsimile: (916) 760-3733

Attorneys for Plaintiff STEVE TRACY
 individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

STEVE TRACY, individually and on behalf of
 all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., a
 California Corporation;
 GEORGE GRINZEWITSCH, JR., an
 individual; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00282778

CLASS ACTION

**MEMORANDUM OF POINTS &
 AUTHORITIES IN SUPPORT OF
 PLAINTIFF'S MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION AND PAGA SETTLEMENT**

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

This Motion is brought seeking preliminary approval of a wage and hour class action settlement in the gross amount of \$750,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release). Plaintiff Steve Tracy (“Plaintiff”) brought this class action individually and on behalf of other similarly situated employees employed by Defendant Von Housen’s Sacramento, Inc. (“Defendants”). Plaintiff worked for Defendant in California from March 2000 to June 13, 2020 and was subject to all the same policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint); Declaration of Steve Tracy (“Decl. Tracy”) ¶ 2.

Plaintiff has alleged that Defendant failed to pay overtime, failed to pay minimum wages, failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed to timely pay final wages, failed to reimburse expenses, engaged in unfair competition, violated Labor Code section 558, failed to maintain accurate records, and failed to pay wages in a timely manner. *See generally* Exhibit B. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the LWDA Regarding PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendants violated California law by 1) maintaining a compensation system that failed to pay putative class members for all hours worked; 2) failing to pay putative class members for non-selling time, such as time spent in meetings, trainings, and during rest periods; 3) failing to authorize and permit putative class members to take all meal and rest periods; 4) failing to keep track of putative class members’ hours worked; 5) failing to pay putative class members overtime wages; and 6) failing to reimburse putative class members for the use of their personal cellphones for work. *See* Exhibit B. Plaintiff has contended that this is a meritorious class action lawsuit and that this case is appropriate for class certification for settlement purposes as the requisites for class certification in this case can be satisfied. *See* Exhibit B.

Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 5. Defendant has denied that this case is appropriate for class certification other than for purposes of settlement and

1 that Plaintiff would have difficulty proving class certification is proper here. *See id.* Moreover,
2 Defendant contends that some or all of the putative class members are subject to an arbitration
3 agreement that prohibits and/or does not authorize arbitration of any class-wide disputes. However,
4 subject to approval by the Court, the parties have been able to compromise and settle all asserted claims
5 for monetary compensation as a result of extensive investigations, informal document and data
6 exchanges, and extended negotiations relating to all aspects of the asserted claims. *See Exhibit A.*
7 Plaintiff's counsel is convinced that the proposed settlement is in the best interest of the putative class
8 based on the discovery, investigations, negotiations, and a detailed knowledge of the issues in this case.
9 *See Decl. Rodriguez, ¶¶ 3, 6-10.* The prospect of potential class certification issues and the uncertainty
10 of class certification, difficulties of complex litigation, the lengthy process of establishing specific
11 damages and various possible delays and appeals were carefully considered by Plaintiff and Plaintiff's
12 counsel in agreeing to the proposed settlement. *See id.*

13 It is well within the discretion of this Court to grant preliminary and conditional approval of the
14 Agreement, which satisfies all of the criteria for preliminary settlement approval under California law.
15 Accordingly, Plaintiff requests that the Court: (1) provisionally and conditionally certify the proposed
16 settlement class; (2) grant preliminary and conditional approval of the proposed Agreement (Exhibit
17 A); (3) set dates for and direct distribution to the class of the Notice of Settlement (Exhibit F), which
18 provides Class Members information regarding the settlement, including information regarding the
19 opportunity to opt-out of, or object to, the settlement and notifies each class member of their expected
20 pro rata share of the settlement; and (4) adopt the implementation schedule contained in the proposed
21 order and schedule a final approval hearing.

22 **II. PROCEDURAL AND LITIGATION HISTORY**

23 Plaintiff filed a class action complaint on approximately August 4, 2020, in the Sacramento
24 County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the
25 PAGA by providing notice of the claims and violations to the LWDA. *See Exhibit C; Cal. Lab. Code §*
26 *2699.3(a), (c); Decl. Rodriguez, ¶ 3.* Then, Plaintiff filed a First Amended Class Action Complaint on
27 approximately November 20, 2020 to include a PAGA claim. *See id.; Exhibit B.* There is no date set
28 for a motion for certification or trial in this matter. *See Decl. Rodriguez, ¶ 4.*

1 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

2 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
3 potential damages for such claims. *See id.* Plaintiff worked during the time all of Defendant's alleged
4 policies and practices at issue in the Complaint were in effect and provided information regarding these
5 alleged policies and practices, enabling pre-filing investigations to take place. *See Decl. Tracy* ¶¶3, 5.
6 The parties engaged in informal discovery and exchange of documents, including a representative
7 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the
8 entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects
9 of the asserted claims, including certification issues, merits issues, damages, the scope and
10 configuration of Class Members, the content and implementation of the alleged wage and hour policies
11 at issue, issues relating to manageability concerns at trial, among other relevant areas. *See Decl.*
12 *Rodriguez*, ¶ 7. The information allowed Plaintiff to determine the extent and frequency of any alleged
13 violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the
14 reasonableness of any settlement. *See id.*

15 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

16 **a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations**

17 The final settlement occurred only after extended, and sometimes contentious, arm's length
18 negotiations. Over the course of approximately six months, Plaintiff has been investigating the claims
19 and discussing with Defendant's counsel the merits of the claims and certification issues present in this
20 case. *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and legal analysis
21 regarding the asserted claims. *See id.* Then, only after nearly six months of litigation and negotiation,
22 which included a full day mediation with Louis Marlin, Esq., were the parties able to reach a mutually
23 agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties agreed to a
24 Maximum Settlement Amount of \$750,000. *See Exhibit A.*

25 **b. The Terms of the Settlement**

26 Under the settlement agreement, Defendant has agreed to the following:

- 27 1. The following groups of individuals are covered by the Settlement (*See Exhibit A*, ¶
28 1.3):

1 all non-exempt employees who have or continue to work for Defendant in
2 California from August 4, 2016 through the earlier of either June 15, 2021
or the Preliminary Approval Date.

3 2. Pay the Maximum Settlement Amount of \$750,000 to resolve and release the claims
4 alleged in the Complaint. *See id.* at ¶ 5.1. No portion of the Maximum Settlement Amount will revert
5 to Defendant. *See id.* at ¶ 5.8.

6 3. The parties agree that up to \$15,000 for Plaintiff Steve Tracy will be paid as a Class
7 Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be
8 entitled to under the terms of the Agreement. *See id.* at ¶ 5.6.

9 4. The parties agree that the cost of administering this class action settlement shall be paid
10 from the settlement proceeds. Subject to Court approval, the parties have selected Simpluris, Inc. to act
11 as the Settlement Administrator, who has provided a maximum cost estimate of \$8,000.00 to administer
12 the class settlement. *See Exhibit D (Simpluris, Inc. Quote).* The difference between any actual
13 administration costs and the \$12,500 allocated under the Agreement, if any, will be paid to Settlement
14 Class Members on a pro rata basis. *See Exhibit A, ¶ 5.5.*

15 5. The parties agree that \$10,000 of the Maximum Settlement Amount shall be allocated to
16 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
17 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See id.* at 5.7.

18 6. The parties agree that up to thirty-five percent (35%) of the Maximum Settlement
19 Amount (\$262,500) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case.
20 Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See*
21 *id.* at ¶ 5.4. Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation
22 costs as approved by the Court in an amount not to exceed \$17,500. *See id.* The difference between
23 any actual costs and the \$17,500 will be redistributed to Settlement Class Members on a pro rata basis.
24 *See id.* The proposed notice to be sent to class members will state this information. *See Exhibit F.*

25 7. Any Settlement Administrator Costs, any amounts paid for attorneys' fees and costs, any
26 monies necessary to satisfy Defendant's tax obligations, the Class Representative Enhancement
27 Payment, and PAGA Payment will be paid out from the Maximum Settlement Amount, not in addition
28 to the Maximum Settlement Amount. *See Exhibit A, ¶¶ 5.1-5.8.*

1 8. In consideration for the value received in the Agreement, Class Members who fail to
2 timely opt-out of this settlement will waive all Settlement Class Member's Released Claims as set forth
3 in the Agreement. *See* Exhibit A, ¶¶ 1.3, 1.28, 1.29, 1.33, 6.1, 6.2.

4 In consideration for the value received in the settlement agreement, class members who fail to
5 timely opt-out of this settlement will waive all causes of action and factual or legal theories that were
6 alleged in the Complaint or reasonably could have been alleged based on the facts, causes of action, and
7 legal theories contained in the Complaint, including all of the following claims for relief: (a) failure to pay
8 overtime wages; (b) failure to pay minimum wages; (c) failure to provide proper meal periods, and to properly
9 provide premium pay in lieu thereof; (d) failure to provide proper rest breaks, and to properly provide
10 premium pay in lieu thereof; (e) waiting time penalties for untimely pay during employment and untimely
11 final pay; (f) improper and/or inaccurate wage statements; (g) failure to reimburse business expenses; (h)
12 failure to keep complete or accurate payroll records; (i) unfair business practices based thereon; (i) civil
13 penalties under the Labor Code Private Attorneys General Act ("PAGA") based thereon; (j) any other
14 claims or penalties under the wage and hour laws pleaded in the Action; and (k) all damages, penalties,
15 interest and other amounts recoverable under said causes of action under California and federal law, to the
16 extent permissible, including but not limited to the California Labor Code as to the facts alleged in the
17 Action, the applicable Wage Orders as to the facts alleged in the Action, and the California Unfair
18 Competition Law. The period of the Release shall extend to the limits of the Covered Period. The *res*
19 *judicata* effect of the Judgment will be the same as that of the Release. *See* Exhibit A, ¶¶ 1.3, 1.28, 1.29,
20 1.33, 6.1, 6.2.

21 For any portion of the Net Settlement Sum allocated to Settlement Class Members that is not
22 claimed by them by cashing their respective settlement checks within 120 days, the remaining amount
23 shall be tendered to the Controller of the State of California to be held pursuant to the Unclaimed
24 Property Law, California Civil Code section 1500, *et seq.*, for the benefit of the Settlement Class
25 Members who did not cash their checks until such time that they claim their property. *See id.* at ¶ 5.8.

26 **c. Allocation of Settlement Funds**

27 Payment to Settlement Class Members of their Individual Settlement Amount will not require
28 the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the

Maximum Settlement Amount any amounts for approved attorneys' fees and costs, employer tax contributions, any Enhancement Payment to the Class Representative, the Settlement Administrator Costs, and the PAGA Payment. For payment allocation purposes only, Class Members will be divided into two subclasses: (1) Positions subject to a commission/bonus pay plan; and (2) all Class Members not falling into Subclass 1, *i.e.*, hourly-paid non-exempt positions not subject to a commission/bonus pay plan. Subclass 1 shall be allocated 70% of the Net Settlement Amount and Subclass 2 shall be allocated 30% of the Net Settlement Amount. Each Class Member's proportionate share will be determined by dividing their total Qualifying Workweeks worked within their respective subclass during the Covered Period by the total Qualifying Workweeks worked by all Class Members within the subclass during the Covered Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount, *i.e.*, Individual Settlement Amount. Payments shall be reduced as necessary to account for mandatory payroll withholdings. *See id.* at ¶ 5.10.

V. ARGUMENT

a. Class Action Settlements are Subject to Court Review and Approval Under the California Rules of Court

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(1)(2) (requiring Court review of PAGA settlements). However, courts should give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms

¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 agreeable to all parties, a court should disapprove of the settlement “only with considerable
2 circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
3 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
4 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
5 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

6 **b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

7 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
8 determine only whether the proposed settlement is within the range of possible approval and whether
9 notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is
10 warranted. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls
11 within “the range of reasonableness,” it should grant preliminary approval of the class action settlement.
12 *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90
13 (1994). To make the fairness determination, the Court must consider several factors, including:

14 the strength of the Plaintiff’s case, the risk, expense, complexity and likely
15 duration of further litigation, the risk of maintaining class action status
16 through trial, the amount offered in settlement, the extent of discovery
17 completed and the stage of the proceedings, the experience and views of
counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.

18 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its
19 analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists
20 where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery
21 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
22 litigation; and (4) the percentage of objectors is small.” *Id.* at 1802.

23 **i. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length**
24 **Negotiations Between the Parties**

25 Settlement in this case was reached only after litigation and extensive arm’s length negotiations
26 lasting nearly six months, which included a full day mediation with Louis Marlin, Esq. *See Decl.*
27 *Rodriguez*, ¶¶ 6-10. At all times, the negotiations were adversarial and contentious, although still
28 professional in nature. *See id.* Further, while Plaintiff contends he would ultimately prevail on the

1 claims and the issue of certification, this is not a certainty and there is substantial risk in proceeding to
2 further litigation. *See id.* at ¶¶ 6-10. The ability to secure a guaranteed settlement now and ensure class
3 members receive some compensation, rather than proceed to further litigation and potentially recover
4 nothing, was a motivating factor in reaching this settlement. *See id.*

5 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
6 **Information to Enter Into an Informed and Reasonable Settlement**

7 The parties were in possession of all necessary information during the negotiations. The parties
8 engaged in substantial informal discovery and exchange of documents, including a representative
9 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the
10 entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the
11 class claims and helped thoroughly vet the extent of Plaintiff's claims against Defendants and create an
12 accurate damages model. *See id.* at ¶ 6-10. Plaintiff was in possession of this information prior to
13 calculating the potential damages in this case. *See id.* As a result, Plaintiff was able to make a
14 reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the settlement now
15 before the Court was reached at a stage where “the parties certainly have a clear view of the strengths
16 and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp.
17 610, 617 (N.D. Cal. 1979).

18 **iii. Plaintiff's Counsel is Experienced in Similar Litigation**

19 Plaintiff's counsel has considerable experience in class actions and wage and hour litigation.
20 Plaintiff's counsel has brought and is currently bringing several wage and hour class and/or PAGA
21 actions. Thus, Plaintiff's counsel is qualified to evaluate the class claims, value of settlement versus
22 moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl.*
23 *Rodriguez*, ¶¶ 11-17. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the
24 complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to
25 the class. *See id.* at ¶ 6.

26 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
27 **and the Risks and Costs of Further Litigation**

28 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on

1 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 27.8 % and a
2 net recovery of approximately 16.1% of the claims' maximum likely value. *See id.* at ¶¶ 9-10.
3 Additionally, the average net award per class member is approximately \$1,623.13. *See id.* This
4 settlement is a reasonable compromise of the class and PAGA claims and is within the percentile
5 ranges of the total available damages that have been approved in other class settlements. *See Wershba,*
6 *91 Cal. App. 4th at 246, 250; Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers*
7 *for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision*
8 *Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of
9 6% of maximum potential recovery after reduction for attorney's fees was higher than median
10 percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000
11 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving
12 a settlement where the net recovery to class members was approximately 7.5% of the projected
13 maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D.
14 Cal. 2017): (approving a settlement with a gross recovery of 11% of the projected maximum damages
15 available and a net recovery of approximately 6.7% of the projected maximum recovery);
16 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where
17 the gross recovery was approximately 8.5% of the projected maximum recovery).

18 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

19 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
20 information be presented to the Court, acting as a fiduciary for the absent class members "to ensure that
21 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
22 being released, discounted by the risks and expenses of attempting to establish and collect on those
23 claims by pursuing the litigation" *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
24 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to
25 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
26 risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an
27 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
28 claims provided there is a record that allows "an understanding of the amount that is in controversy and

1 the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record
2 before the trial court was sufficient, having included the number of class members, payroll data,
3 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
4 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
5 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
6 that is in controversy within the meaning of *Kullar*.” *Id.*

7 Plaintiff similarly relied upon payroll data and Class Members’ data to determine the realistic
8 potential damages allegedly suffered by the class as a whole. *See* Decl. Rodriguez, ¶¶ 6-10. This
9 analysis allowed Plaintiff to determine the extent and frequency of potential alleged violations on all
10 claims as to all Class Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand
11 for the putative class that is within the range of what has been found to be sufficient in several other
12 cases. *See, supra*, Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at
13 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a
14 settlement of \$11.7 million where the maximum range of damages was \$5,000 for each of the alleged
15 300,000 instances of unlawful recording violations (\$1.5 billion), equaling approximately .78% of the
16 total demand and approximately \$800 per class member). This settlement represents a reasonable
17 compromise given the percentage of the total demand that was secured, the average recovery per class
18 member, the Court’s ability and discretion to cut PAGA penalties, and the uncertainty of class
19 certification. *See* Decl. Rodriguez, ¶¶ 9-10.

20 **vi. The Enhancement Payment to the Named Plaintiff for Plaintiff’s Services to the**
21 **Putative Class Is Reasonable and Routinely Awarded by Courts**

22 The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort
23 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
24 compensate named plaintiffs for the services they provide and the risks they incurred during the course
25 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
26 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
27 recognition of the services they provided to the class by responding to discovery, participating in the
28 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*

1 also *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
2 enhancement payment).

3 In this case, Plaintiff provided and explained documents, being available at all times to discuss
4 the case with Plaintiff's counsel. *See* Decl. Rodriguez, ¶ 7; Decl. Tracy, ¶ 5. Plaintiff spent a
5 significant amount of time pursuing this litigation for the benefit of all Class Members. *See id.*
6 Plaintiff brought this action knowing there would be a delay in any payment as the litigation
7 progressed, rather than proceeding on individual claims in front of the California Labor Commissioner.
8 *See id.* Payment of \$15,000 to Plaintiff is appropriate given the risk, assistance, time required in
9 bringing this case and resolution of this case.

10 **vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
11 **and Customarily Approved by Courts**

12 California state and federal courts have recognized that when a litigant's efforts create or
13 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
14 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
15 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other
16 than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*
17 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
18 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
19 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
20 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
21 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
22 burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
23 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
24 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
25 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

26 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
27 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
28 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886

1 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a certified class
2 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
3 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
4 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
5 class of beneficiaries (e.g. the settlement class), the benefits can be accurately traced to the settlement
6 Plaintiff and Plaintiff’s counsel were able to negotiate on behalf of the class, and the fee can be shifted
7 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
8 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
9 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
10 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
11 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
12 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

13 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
14 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
15 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
16 generally approved as reasonable in wage and hour settlements below \$10 million:

17 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
18 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
19 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
20 recent wage and hour class actions where federal district courts approved attorney fee
21 awards ranging from 30 to 33%); *Singer v. Becton Dickinson and Co.*, 2010 U.S. Dist.
22 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

23 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiff’s
24 request of Thirty-five percent (35%) of the settlement sum for attorneys’ fees is within established rates
25 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
26 excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379
27 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634;
28 *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v.*

1 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v.*
2 *Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC
3 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern
4 District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should
5 consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the
6 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and
7 (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur.*
8 *Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555,
9 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class counsel’s fee
10 request further supports finding the fee request reasonable”).

11 These factors support Plaintiff’s request for reasonable attorneys’ fees. The typical percentage
12 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
13 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
14 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiff’s
15 request of 35% falls within these typical fee arrangements. *See Decl. Rodriguez*, ¶ 18. The quality of
16 counsel and the average size of settlement payments to Class Members and Aggrieved Employees
17 (\$1,623.13) also support the fee request when compared to other settlements courts have considered as
18 good results. *See Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal.
19 2012) (“Class Members will receive an average of approximately \$198.70, with the highest payment to
20 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
21 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
22 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
23 results achieved in this case were very favorable. Class members are provided with immediate
24 monetary relief, with an average award of around several hundred dollars and a minimum award of
25 \$50”).

26 **c. Provisional Certification of the Class is Appropriate**

27 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
28 defined community of interest in the questions of law and fact involved affecting the parties to be

represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three factors: (1) common questions of law or fact predominate; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous

The proposed settlement class is ascertainable because all putative class members can be readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are approximately 268 individuals who fall within the definition of Class Member, which makes joinder of all members impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

ii. The Commonality, Predominance, and Typicality Requirements are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the named representative are typical of those of the class, though “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

The common questions of law and fact in this case stem from Plaintiff’s contention that

²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 Defendant allegedly violated the law by 1) maintaining a compensation system that failed to pay
2 putative class members for all hours worked; 2) failing to pay putative class members for non-selling
3 time, such as time spent in meetings, trainings, and during rest periods; 3) failing to authorize and
4 permit putative class members to take all meal and rest periods; 4) failing to keep track of putative class
5 members' hours worked; 5) failing to pay putative class members overtime wages; and 6) failing to
6 reimburse putative class members for the use of their personal cellphones for work. *See* Exhibit B.
7 The waiting time penalties, unfair competition, and PAGA claims are derivative of these violations.
8 *See id.* Plaintiff and the Class Members seek the same remedies under state law. Under these specific
9 circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality
10 requirement, Plaintiff contends he suffered from the same unlawful policies, treatment, and
11 circumstances as Class Members did, will request the same remedies, and will rely on the same
12 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
13 satisfied for settlement purposes.

14 **iii. The Adequacy Requirement is Met**

15 The adequacy of representation requirement is met if the named representative and counsel have
16 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
17 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
18 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed settlement,
19 Plaintiff and the putative class members will receive a pro rata share of the settlement based on the
20 number of workweeks they worked for Defendants. *See* Exhibit A. Finally, any settlement class
21 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
22 of workweeks stated in the Notice of Settlement (Exhibit F).

23 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
24 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
25 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
26 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
27 engaged Defendant's counsel in settlement discussions over the course of approximately six months.
28 Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because

1 Plaintiff's counsel has vigorously pursued Plaintiff's and the class members' claims, the adequacy
2 requirement is met. *See generally* Decl. Rodriguez.

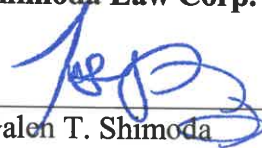
3 **VI. CONCLUSION**

4 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
5 conditionally certify the class for settlement purposes; grant preliminary and conditional approval to the
6 proposed settlement, including the Plaintiff's Class Representative Enhancement Payment, the payment
7 to the LWDA under PAGA, and Class Counsel's application for reasonable attorneys' fees and costs;
8 approve the Notice of Settlement, including the proposed deadlines for opting-out of and objecting to
9 the settlement; and schedule the final settlement approval hearing. A copy of Plaintiff's proposed order
10 is being filed concurrently herewith.

11
12 Dated: April 14, 2021

Shimoda Law Corp.

13
14 By: _____


Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

1 Tracy v. Von Housen's Sacrametno, Inc.
2 Sacramento County Superior Court of California 34-2020-00282778

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Rylee K. Fonseca, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On April 14, 2021, I served the following documents on the party below:

- 9 • Memorandum Of Points & Authorities In Support Of Plaintiff's Motion
10 For Preliminary Approval Of Class Action And PAGA Settlement

11 Gregory C. Cheng (SBN: 226865)
12 Heidi G. Kim (SBN: 306641)
13 Ogletree, Deakins, Nash, Smoak & Stewart,
14 P.C.
15 One Embarcadero Center, Ste. 900
16 San Francisco, CA 94111
17 Telephone: (415) 536-3406
18 Facsimile: (415) 442-4870
19 Email: Gregory.cheng@ogletree.com
20 Heidi.kim@ogletree.com

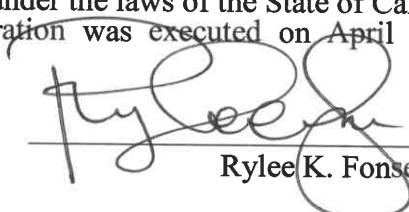
21 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the date set
25 forth above, I served the aforementioned document(s) on the parties in
26 said action by placing a true copy thereof enclosed in a sealed envelope
27 with postage thereon fully prepaid, for collection and mailing on this date,
28 following ordinary business practices, at Elk Grove, California, addressed
as set forth above.

29 [] [By Personal Service] By personally delivering a true copy thereof to the
30 office of the addressee above.

31 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
32 above. No error was reported by the e-mail service that I used.

33 [] [By Overnight Courier] By causing a true copy and/or original thereof to
34 be personally delivered via the following overnight courier service: UPS.

35 I declare under penalty of perjury under the laws of the State of California that the foregoing
36 is true and correct, and that this declaration was executed on April 14, 2021 at Elk Grove,
37 California

38 
Rylee K. Fonseca

Galen T. Shimoda (Cal. State Bar No. 226752)
 Justin P. Rodriguez (Cal. State Bar No. 278275)
 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
 9401 East Stockton Boulevard, Suite 120
 Elk Grove, CA 95624
 Telephone: (916) 525-0716
 Facsimile: (916) 760-3733

Attorneys for Plaintiff STEVE TRACY
 individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO**

STEVE TRACY, individually and on behalf of
 all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., a
 California Corporation;
 GEORGE GRINZEWITSCH, JR., an
 individual; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00282778

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
 MOTION FOR PRELIMINARY APPROVAL
 OF CLASS ACTION AND PAGA
 SETTLEMENT**

Reservation No.: 2560577

Date: May 25, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: August 4, 2020

FAC Filed: November 20, 2020

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on May 25, 2021, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 54 of the above-entitled Court, Plaintiff Steve Tracy, individually and on
4 behalf of all other similarly situated individuals, hereby moves for entry of an Order for the following:

- 5 1. Preliminarily certifying the proposed class herein for purposes of settlement;
 - 6 2. Preliminarily appointing Plaintiff Steve Tracy as class representative for purposes of
7 settlement;
 - 8 3. Preliminarily appointing the Shimoda Law Corp. as Class Counsel for purposes of
9 settlement;
 - 10 4. Preliminarily approving the proposed class action settlement, in the amount of \$750,000,
11 which is incorporated herein by reference;
 - 12 5. Preliminarily approving the application for payment to Class Counsel of attorneys' fees in
13 the amount of \$262,500 (35% of the Gross Settlement Amount);
 - 14 6. Preliminarily approving the application for payment to class counsel of reasonable costs not
15 to exceed \$17,500;
 - 16 7. Preliminarily and conditionally approving the Class Representative Enhancement Payment of
17 \$15,000 to Plaintiff Steve Tracy;
 - 18 8. Preliminarily approving the appointment of Simpluris, Inc. as the Settlement Administrator
19 and for payment to Simpluris, Inc. for administering said class action settlement in an amount
20 not to exceed \$12,500;
 - 21 9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
22 the total amount of \$10,000, 75% of which will be paid to the Labor and Workforce
23 Development Agency and 25% of which will be paid to Aggrieved Employees;
 - 24 10. Approving as to form and content the Notice of Settlement, which will provide Class
25 Members information regarding the settlement, their ability to opt out of, or object to, the
26 class action settlement and which provides instruction on how to dispute an individual's
27 settlement allocation under the proposed settlement agreement;
- 28

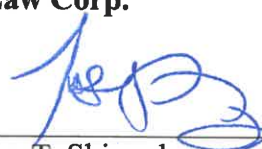
- 1 11. Approving the proposed procedures to notify the class and determining that the proposed
2 notification procedures and process complies with class members' due process rights and
3 directing the Notice of Settlement to be sent by first class mail to Class Members;
4 12. Directing the Defendants to report employment information, including social security
5 numbers, to the Settlement Administrator to administer the settlement proceeds;
6 13. Scheduling a fairness hearing on the question of whether the proposed settlement should be
7 finally approved as fair, reasonable, and adequate;
8 14. Directing that any residue from settlement checks that were not cashed by the check cashing
9 deadline shall be tendered to the Controller of the State of California to be held pursuant to
10 the Unclaimed Property Law, California Civil Code section 1500, *et seq.*, for the benefit of
11 the Qualified Claimants who did not cash their checks until such time that they claim their
12 property;
13 15. Preliminarily and conditionally approving and adopting the Proposed Order and its
14 implementation schedule, which is filed herewith and incorporated by reference.

15 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
16 2699(l), and California Rule of Court 3.769, on the grounds that the proposed class action and Private
17 Attorneys General Act settlement is fair, reasonable, and adequate as to all class members and should be
18 approved by the Court. This motion will be based on the notice of motion, memorandum of points and
19 authorities, the Declaration of Justin P. Rodriguez, the Declaration of Steve Tracy, exhibits, the record
20 and files of this case, and any further oral or documentary evidence introduced at the hearing of this
21 motion.

22
23 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**
24 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
25 **department may be downloaded off the court's website. If the party does not have online access,**
26 **they may call the dedicated phone number for the department as referenced in the local telephone**
27 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
28 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
court day before the hearing, no hearing will be held.

1 Dated: April 14, 2021

Shimoda Law Corp.

2
3 By: 

4 Galen T. Shimoda
5 Justin P. Rodriguez
6 Brittany V. Berzin
7 Attorneys for Plaintiff
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Tracy v. Von Housen's Sacrametno, Inc.
Sacramento County Superior Court of California 34-2020-00282778

**PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Rylee K. Fonseca, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On April 14, 2021, I served the following documents on the party below:

- Plaintiff's Notice Of Motion And Motion For Preliminary Approval Of Class Action And PAGA Settlement

Gregory C. Cheng (SBN: 226865) Heidi G. Kim (SBN: 306641) Ogletree, Deakins, Nash, Smoak & Stewart, P.C. One Embarcadero Center, Ste. 900 San Francisco, CA 94111 Telephone: (415) 536-3406 Facsimile: (415) 442-4870 Email: Gregory.cheng@ogletree.com Heidi.kim@ogletree.com	
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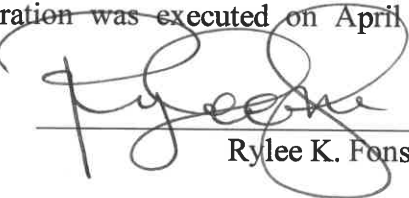
[XXX] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 14, 2021 at Elk Grove, California



Rylee K. Fonseca