

PRIVATE ATTORNEYS GENERAL ACT
SECOND AMENDED SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Second Amended Settlement Agreement and Release (“Agreement”) is made by and between Plaintiffs VERONICA TAPIA, CLAUDIA MORALES and ELIZABETH REYES (collectively, “Plaintiffs”), individually, and on behalf of all other aggrieved employees (the “Aggrieved Employees,” as described below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the Private Attorneys General Act (“PAGA”) on the one hand, and Defendant HOME and BODY COMPANY (“Defendant”), on the other hand. Plaintiffs and Defendant are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiffs, the Aggrieved Employees they represent, and Defendant, subject to the approval of the Court.

WHEREAS, Plaintiffs Veronica Tapia, Claudia Morales and Elizabeth Reyes have filed separate complaints (“Complaints”) in the Superior Court of California, Orange County entitled *Tapia, et al. v. Home and Body Company*, Orange County Superior Court Case No. 30-2020-01155185-CU-OE-CXC (“*Tapia*” action) and *Reyes v. Home and Body Company*, Orange County Superior Court Case No. 30-2020-01169522-CU-OE-CXC (“*Reyes*” action) (the “Lawsuits”). The Parties filed a joint stipulation to consolidate the Lawsuits and that was granted by the Court on March 23, 2022. The Lawsuits assert representative claims for civil penalties payable to themselves, other aggrieved employees, and the State of California pursuant to PAGA, based on allegations that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to timely pay final wages at termination; (6) failed to furnish accurate itemized wage statements; and (7) failed to reimburse necessary business expenses. Specifically, the Representative PAGA Claims are claims for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2802, as well as the applicable provisions of the Industrial Wage Orders and any other PAGA violations that have been asserted in the Complaints and/or PAGA Notices, including all PAGA claims stated expressly or by implication in any of the Notices filed with the LWDA. . The applicable PAGA Notices related to the Lawsuits are attached hereto as **Exhibit A** (all of the foregoing is collectively referred to as Plaintiffs’ “Representative PAGA Claims”).

WHEREAS, Plaintiffs timely sent notices to the LWDA of their intent to pursue representative actions pursuant to PAGA, on behalf of themselves, in their respective Lawsuits, and the State of California as well as on behalf of a group of aggrieved employees (the notices by Plaintiffs to the LWDA are collectively referred to as the “PAGA Notice” herein).

WHEREAS, Plaintiffs signed enforceable arbitration agreements entered during their employment with Defendant.

WHEREAS, on January 25, 2022, the Parties attended an all-day mediation with experienced wage-and-hour mediator Lynn Frank, Esq. As a result, the Parties agreed to settle Plaintiffs’ Representative PAGA and individual claims, taking into account all known facts and

circumstances including the difficulty of proving some of Plaintiffs' claims, potential defenses asserted by Defendant, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: "All non-exempt employees who are or were employed by Defendant within the State of California between July 1, 2019 and April 30, 2022."

WHEREAS, for purposes of this Settlement, PAGA Period is defined as "the period from July 1, 2019 through April 30, 2022."

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiffs' Representative PAGA Claims, and individual claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiffs and the Aggrieved Employees have against Defendant and Defendant's former, present and future owners, shareholders, members, parent corporations or entities, sister corporations or entities, related and/or affiliated entities, subsidiaries, divisions, investors, partners, general partners, limited partners, directors, officers, employees, managers, supervisors, assigns, heirs, beneficiaries, predecessors, successors, attorneys, agents, managing agents, accountants, contractors, and representatives, and all others related to them, and each of them (collectively, the "Released Parties"). The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant or the Released Parties of any wrongdoing or liability. Specifically, Defendant and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuits and the PAGA Notice. Defendant and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, and have arrived at the settlement after extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, Defendant and Plaintiffs and their respective counsel are of the opinion that the amount and terms of the Settlement are fair, reasonable, and adequate and are in the best interests of the Plaintiffs, the Aggrieved Employees, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiffs and the Aggrieved Employees, Moon & Yang, APC and CounselOne, PC believe that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties: (1) believe and agree that this Agreement provides for a fair, adequate,

and reasonable resolution of the Representative PAGA Claims, (2) have investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, and (3) have arrived at the settlement through extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

WHEREAS, on May 02, 2022, the Parties submitted a previous version of settlement agreement that was presented to the Court as part of Plaintiffs’ Motion for Approval of PAGA Settlement (“Plaintiffs’ PAGA Approval Motion”) and designated to be heard on June 03, 2022. Based on the Court’s calendar of availability, however, that hearing date was *sua sponte* reset for September 02, 2022.

WHEREAS, while Plaintiffs’ PAGA Approval Motion was filed yet pending hearing and ruling, the United States Supreme Court issued its decision in *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (June 15, 2022). Thereafter, Defendant’s counsel expressed to Plaintiffs’ counsel its position that the Supreme Court’s *Viking River Cruises* case so markedly changed the procedural and substantive nature and scope of the original settlement that Defendant intended to oppose Plaintiffs’ PAGA Approval Motion based on the arbitration agreement that Defendant contends Plaintiffs signed and based on the position that Defendant could not previously successfully file a motion to compel Plaintiffs’ PAGA claims prior to *Viking River Cruises*. Plaintiffs disagree and deny that *Viking River Cruises* justifies any basis for withholding settlement approval, and nothing herein is to be construed as admission to the contrary.

WHEREAS, notwithstanding their diverging positions, after further informal settlement negotiations, in consideration of the mutual covenants and promises set forth herein, including the good faith stand by clause of Paragraph 12 below, the Parties agree to this amended Settlement Agreement and its terms.

WHEREAS, based on the Court’s initial ruling on Plaintiffs’ Motion for Approval of PAGA Settlement, the Parties have further revised this agreement to separate Plaintiffs’ general release from this Agreement.

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. Effective Date. The effective date (“Effective Date”) of this Agreement shall mean the date the Court approves the Settlement.

2. PAGA Released Claims/Effect of Judgment on Aggrieved Employees and LWDA. The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiffs, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only, against the “Released Parties”. It is expressly understood and agreed that this settlement only includes a full release of the PAGA claim for violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2802, as well as the applicable provisions of the Industrial Wage Orders, and any other PAGA violations that have been asserted in the action in the Complaints and/or PAGA Notice, including all PAGA claims stated expressly or by implication in any of the Notices filed with the LWDA, attached as **Exhibit A** (all of the foregoing are collectively referred to as Plaintiffs’ “Representative PAGA Claims”). With the exception of Plaintiffs, this settlement shall not impact Aggrieved Employees’ ability to assert claims other than PAGA claims arising from the alleged foregoing violations of the Labor Code.

3. Notice to LWDA. Pursuant to California Labor Code § 2699(k)(2), Plaintiffs shall submit to the LWDA a copy of this Agreement at the same time that the Parties submit it to the Court for approval.

4. Gross Settlement Amount. Defendant agrees to pay, in accordance with the terms set forth herein, the total sum of \$432,000 (the “Gross Settlement Amount”) in full settlement of the PAGA Claims, the above referenced lawsuits, and Plaintiffs’ individual claims. The Gross Settlement Amount will be allocated as follows:

- a. PAGA Counsel’s attorneys’ fees and costs request of up to 35% of the Gross Settlement Amount (\$151,200) (“PAGA Counsel’s Fees”) and PAGA Counsel’s separate request for reasonable litigation costs incurred in this matter (“PAGA Counsel’s Costs”) not to exceed \$40,000.00. Defendant will not oppose these requests. To the extent that the Court approves less than the amount of attorney’s fees and costs that PAGA Counsel requests, any reduced amount shall revert to the PAGA Fund;
- b. Administration costs estimated not to exceed \$20,000.00 to be paid to the Settlement Administrator (“Administration Costs”);
- c. The remainder of the Gross Settlement Amount (the “PAGA Fund”) after deducting items (a), (b) and (c) is approximately \$220,800, and shall be designated as PAGA Penalties to be allocated between the LWDA and the

Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the “LWDA PAGA Portion”) and 25% paid to the Aggrieved Employees (the “Aggrieved Employees’ PAGA Portion”) on a pro-rata basis as set forth in Paragraph 5 below and to be funded in two equal installments as set forth in Paragraph 9 below.

5. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. Defendant will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the PAGA Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. Within 10 calendar days of the Effective Date, Defendant will then provide this data to the Settlement Administrator who shall determine each individual payment to the Aggrieved Employees as set forth in Paragraph 9.

6. Escalator Clause: Defendant estimates the PAGA Group represents approximately 25,172 pay periods and this estimate serves as the basis for Plaintiffs’ accepting the settlement. Should the number of pay periods increase by more than 10%, Defendant will have the option of either (1) increasing the Gross Settlement Amount proportionately over the 10% margin (*i.e.* meaning if the pay periods increase by 11%, the settlement will increase by 1%), or (2) changing the beginning or ending dates of the PAGA Period so that the pay periods are no more than 10% higher than 25,172.

7. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued by the Settlement Administrator, if applicable. IRS Form 1099s are used for payments of miscellaneous income that is not considered wages, such as the penalty payments at issue in this Settlement. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Defendant, their counsel and Plaintiffs’ and the Aggrieved Employees’ counsel are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel’s fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments. Neither Plaintiffs nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

8. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,

(B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

9. PAGA Settlement Payment Procedures.

- a. **Funding.** The Gross Settlement Amount of \$432,000 will be funded and paid by Defendant in two (2) equal installments as follows: (i) the first Settlement Installment Payment of two hundred and sixteen thousand dollars (\$216,000) shall be deposited by Defendant with the Settlement Administrator within 10 calendar days of the Effective Date; and (ii) the remaining two hundred and sixteen thousand dollars (\$216,000) shall be deposited by Defendant with the Settlement Administrator within six (6) months thereafter the first installment is due (collectively, "Settlement Installment Payments"). If the Gross Settlement Amount increases pursuant to Paragraph 6, then the amounts to be paid by Defendant will proportionally increase.
- b. **Class List and Pre-Mailing Administration.** Within 10 calendar days of the Effective Date, Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, social security number, the actual number of pay periods worked by him or her during the PAGA Period to the extent available from Defendant's records. The Settlement Administrator shall run all the addresses of Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within 10 calendar days of receiving the Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. This anonymized spreadsheet will also be used by Plaintiffs' Counsel to determine whether the Escalator Clause has been triggered although the parties agree to work in good faith to determine if the Escalator Clause has been triggered. Any dispute whether the Escalator Clause has been triggered shall be resolved by the mediator (Ms. Frank). Prior to disbursement of any funds from the Settlement Installment

Payments, the Settlement Administrator will provide for review and approval by all counsel, a disbursement summary of the calculations for the proportional distribution of the Service Payments to Plaintiffs, payment of PAGA Counsel's Fees and Costs, Administration Costs, payment of the LWDA PAGA Portion, payment of the Aggrieved Employees' PAGA Portion, and Individual PAGA Payments.

- c. **Distribution.** No later than twenty (20) calendar days after Defendant fully funds the second Settlement Installment Payment, the Settlement Administrator shall distribute payments from the Gross Settlement Amount in accordance with this Settlement Agreement and the Court's orders, as follows:
- i. Distribute a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit B**). Aggrieved Employees shall not be required to make claims to receive their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's last known mailing address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's individual settlement payment check was received if the payment check has not been returned within thirty (30) days of the original mailing. All uncashed settlement checks shall be sent to the California State Controller's Unclaimed Property division.
 - ii. Distribute a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
 - iii. Distribute PAGA Counsel's fees and costs, as approved by the Court.
 - iv. Distribute payment to itself for services as Settlement Administrator, as approved by the Court.
- d. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are mailed by the Settlement Administrator. All money represented by uncashed settlement checks shall be sent to the California State Controller's Unclaimed Property division in the name of the individual(s) who did not negotiate a settlement check during the negotiation period.
- e. The Parties and their counsel shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

10. Settlement Administrator. The Settlement Administrator shall be responsible for sending notices, calculating settlement payments, preparing all checks and mailings, and complying with all requirements set forth herein. As noted above, the costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount, and the Parties agree to use ILYM GROUP Inc. as the Settlement Administrator.

11. Duties of the Parties Related to Approval. Promptly upon execution of this Agreement, Plaintiffs Veronica Tapia and Claudia Morales shall file their motion for approval of the proposed Settlement and for the entry of an order approving this Settlement as required by Labor Code section 2699(l). Counsel for Plaintiffs agree to send counsel for Defendant a copy of the motion at least one business day before filing the motion. Counsel for Plaintiffs further agree to coordinate the motion date to ensure there are no conflicts for all counsel. The approval motion will request Court approval of the following: (1) the terms of this Agreement, (2) PAGA Counsel's Fees and PAGA Counsel's Costs, (3) payments to Aggrieved Employees and the LWDA, (4) payment to the Settlement Administrator, and (5) Final Judgment. In conjunction with the approval motion, Plaintiffs shall submit a proposed Final Judgment to the Court.

12. Defendant's Good Faith Duty to Stand by Agreement. In exchange for the monetary and funding timeline benefits flowing from this amended Settlement Agreement, Defendant agrees and covenants to honor the \$432,000 Gross Settlement Amount, along with timelines for funding and other associated terms, regardless of whether the Court requires any technical changes to this Settlement Agreement. By virtue of such express and implied good faith duties, Defendant covenants to undertake, in good faith, whatever actions are necessary to satisfy all Court conditions if approval is withheld and contingent on corrections to be resubmitted to the Court. Defendant further warrants and promises that it shall not oppose any request for approval and/or seek to overturn any approval granted by the Court that is substantially consistent with the terms of this Settlement.

13. Interim Stay of Proceedings. The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain Final Judgment.

14. Invalid without Court Approval. In the event this Agreement is not approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative or evidentiary value, and the Parties hereto represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever. In the event that the Agreement does not become final for any reason, this Agreement shall be null and void and any order entered by the Court in furtherance thereof shall be treated as void ab initio. In such a case, the Parties shall return to the status quo as if they had not entered into this Agreement. The Settlement Administrator will be paid by Defendant for its costs through the date it is notified that the Settlement will not proceed.

15. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by Defendant or any Released Party, of any of the matters alleged in the Lawsuits or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiffs, Defendant or the Released Parties.

16. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Agreement will not constitute a waiver of any other provision.

17. Enforcement. The Parties agree that following entry of the Final Judgment, this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Lawsuits over all parties and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Agreement pursuant to pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

18. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

19. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

20. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

21. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

22. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

23. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do

all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

24. Costs and Fees. The Parties shall each bear their own costs and attorneys' fees incurred in connection with this Settlement Agreement, the Action and Plaintiffs' claims, except as otherwise set forth specifically herein.

25. Confidentiality. The Parties agree that this MOU is confidential and that no Party will issue any press release nor other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of any Joint Stipulation for Settlement (or similar long-form Settlement Agreement).

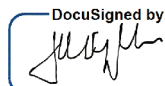
26. Timing of Funding of Settlement. Notwithstanding those funding deadlines for each respective Settlement Installment Payment set forth in Paragraph 9, and which otherwise remain in effect, Defendant shall not be required to pay the second Settlement Installment Payment any earlier than November, 2023.

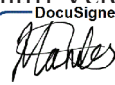
Dated: 4/17/2023, 2023

Dated: 4/17/2023, 2023

Dated: _____, 2023

Dated: _____, 2023

DocuSigned by:

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 Plaintiff Veronica Tapia

DocuSigned by:

 65729004CDBF4E5...
 Plaintiff Claudia Morales

 Plaintiff Elizabeth Reyes

 Defendant Home & Body Company

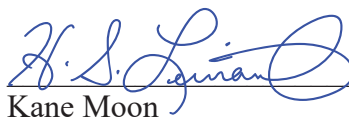
By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April 17, 2023

MOON & YANG, APC


 Kane Moon

H. Scott Leviant
 Attorneys for Plaintiffs Veronica Tapia and Claudia
 Morales, and Aggrieved Employees

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Dated: _____, 2023

Plaintiff Veronica Tapia

Dated: _____, 2023

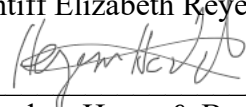
Plaintiff Claudia Morales

04 / 15 / 2023
Dated: _____, 2023



Plaintiff Elizabeth Reyes

4/17/2023
Dated: _____, 2023



Defendant Home & Body Company

By: _____
Hazem Haddad

Its: _____
President

APPROVED AS TO FORM AND CONTENT:

Dated: April ____, 2023

MOON & YANG, APC

Kane Moon
H. Scott Leviant
Attorneys for Plaintiffs Veronica Tapia and Claudia
Morales, and Aggrieved Employees

Dated: April 14, 2023

CounselOne, PC



Jennifer L. Connor
Anthony J. Orshansky
Attorneys for Plaintiff Elizabeth Reyes

Dated: April 17, 2023

LARSEN & NADDOUR LLP



Shawn M. Larsen
Joseph G. Naddour
Attorneys for Defendant Home & Body
Company

Exhibit “A”

MOON & YANG, APC

ATTORNEYS AT LAW
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Kane Moon, Esq.
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August 12, 2020

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL

Home & Body Company
18352 Enterprise Lane
Huntington Beach, CA 92648

Notice of Labor Code Violations and PAGA Penalties

Re: *Veronica Tapia and Claudia Morales v. Home & Body Company*

To Whom It May Concern:

Please be advised that my office has been retained by Veronica Tapia and Claudia Morales (“Plaintiffs”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Home & Body Company. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiffs and all of Defendant’s aggrieved employees.

Plaintiffs wish to pursue a PAGA representative action on behalf of themselves as an aggrieved employees, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiffs and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiffs' Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Orange County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiffs worked for Defendant as packers and general laborers from approximately November/December 2015 to March 2020, primarily in Orange County. Defendant classified Plaintiffs as non-exempt from overtime. During the time period that Plaintiffs were employed by Defendant, Plaintiffs typically worked 5 to 6 days per week, and in excess of 8 hours each workday.

Throughout Plaintiffs' employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiffs' experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiffs and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiffs and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiffs and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the statutory period, Defendant also maintained a

policy and practice of requiring Plaintiffs and the Aggrieved Employees to perform work “off-the-clock”. Defendants required Plaintiffs and the Aggrieved Employees to wait in line in order to clock into work each workday, and when returning from meal periods. Further, Plaintiffs and the Aggrieved employees were required to clock out of work when working in excess of 12 hours in a single workday, and continue to work off the clock. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiffs and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiffs and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiffs and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant’s policy and practice was to not provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiffs and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiffs and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiffs and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiffs and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiffs and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiffs seek penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiffs and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the purchase of blades, spatulas, and non-slip shoes (a portion of the shoes were later reimbursed, after 2018). Plaintiffs and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant,

and Defendant has failed to indemnify Plaintiffs and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiffs and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiffs and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

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

Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (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 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. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiffs and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiffs and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiffs allege that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;

3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination; and
7. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiffs seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiffs have placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law



Anthony J. Orshansky
anthony@counselonegroup.com

310.277.9945 Tel
424.277.3727 Fax

July 13, 2020

FILED VIA LWDA'S PAGA CLAIM NOTICE
ONLINE FORM AND COPY VIA CERTIFIED
U.S. MAIL RETURN RECEIPT REQUESTED

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Home & Body Company
c/o Hazem H. Haddad, Agent for Service
18352 Enterprise Lane
Huntington Beach, California 92648

Re: Elizabeth Reyes v. Home & Body Company, et al.

Dear Sir or Madam:

Please be advised that this firm has been retained to represent Elizabeth Reyes ("Plaintiff"), individually and on behalf of other similarly-situated individuals who are or were employed by Defendant in California as non-exempt hourly employees (collectively, "Employees"), in connection with wage-and-hour claims against Home & Body Company ("Defendant"). Nothing set forth herein is intended to waive any rights, claims, or causes of action on the part of Employees.

Plaintiff was employed by Defendant as an hourly paid machine operator until her separation with the company on March 20, 2020. Plaintiff and Employees have the following causes of action against Defendant: (1) failure to pay all wages and minimum wages; (2) failure to pay all overtime wages; (3) meal and rest break liability under Labor Code sections 226.7, 512, and applicable Industrial Welfare Commission (IWC) Wage Order(s); (4) inaccurate wage statements and failure to maintain accurate payroll records under Labor Code sections 226 and 1174; (5) untimely paid wages and waiting time penalties under Labor Code sections 201-203, 204 and 210; and (6) unfair competition in violation of Business and Professions Code sections 17200, *et seq.*

I. Failure to Pay Wages (Including Minimum Wages) for All Hours Worked.

Plaintiff alleges that Defendant did not fully compensate Plaintiff and Employees who worked as non-exempt or hourly paid employees because they were regularly required to perform post-shift activities that were off-the-clock as well as during meal periods (see discussion *infra*). Through these policies and practices, Defendant thus artificially reduced the actual hours worked as shown in time

records and ultimately disadvantaged Plaintiff and Employees. As a result, Defendant failed to pay Plaintiff and Employees for all hours actually worked, resulting in unpaid minimum and overtime wages.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Labor Code section 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 4-2001 section 4 also obligates employers to pay each employee minimum wages for all hours worked.

Labor Code section 1194.2 authorizes employees to recover liquidated damages for violations of Labor Code section 1194. Where an employee, like Plaintiff and the Employees, is not paid for all hours worked under Labor Code section 1194, the employee may recover minimum wages and liquidated damages for the time for which they received no compensation. *Sillah v. Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 (holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since Defendant failed to provide Plaintiff and Employees with compensation for all hours worked, each is entitled to recover liquidated damages under Labor Code section 1194.2 through the PAGA. Likewise, Plaintiff also seeks penalties on behalf of herself and Employees under Labor Code section 1199.

II. Failure to Pay All Overtime Compensation for Overtime Hours Worked.

In addition to unpaid straight-time, to the extent Plaintiff and Employees worked overtime hours, Defendant has had a consistent policy of failing to pay all overtime owed due to the unaccounted overtime hours worked as a result of the off-the-clock time discussed *supra* and due to the deliberate refusal to “approve” and pay for overtime hours actually worked. Labor Code section 510 sets forth the California requirement that employees must be paid overtime as follows:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The IWC Wage Orders likewise mirror Labor Code section 510’s overtime requirements and apply here. Moreover, Labor Code section 1198 provides that “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” In accordance with Labor Code section 1194, Plaintiff and Employees could not agree to work for an amount less than the minimum wage and overtime compensation required by state law.

As a result, Plaintiff and Employees were deprived of overtime wages whenever they worked in excess of eight (8) hours in any workday and/or forty (40) hours in a workweek in violation of California Labor Code sections 510, 1194, and IWC Wage Order(s).

III. Meal and Rest Period Violations.

Plaintiff asserts that there are serious compliance issues *vis-à-vis* meal breaks. Labor Code sections 226.7 and 512, as well as Section 11 of California Wage Order No. 4-2001, mandate the following for meal breaks: (1) No employer shall employ any person for a work period of more than five (5) hours without a meal break of not less than 30 minutes (Wage Order No. 4-2001, Section 11), and (2) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing a second meal break of not less than 30 minutes. Plaintiff and Employees are entitled to receive premium payment in the form of one additional hour of pay at the Employee's regular rate of pay for non-compliant meal breaks. Labor Code § 226.7; Wage Order No. 4-2001, Section 11.

Here, Defendant violated Labor Code section 512 and the applicable Wage Order(s) by requiring Plaintiff and Employees to perform work during their meal periods without receiving proper compensation and without entering into a lawful on-duty meal period agreement. Plaintiff and Employees performed work tasks while off-the-clock and during their meal periods, which were not duty-free. As a result, Plaintiff and Employees did not receive compliant duty-free meal periods within the first five (5) hours of their work. Moreover, they did not receive second duty-free meal periods when working shifts of ten (10) hours or more. Compliant lunches evidenced by pay records are in reality a sham because Employees were required to work or were interrupted during their meal periods.

Rest breaks must be paid and consist of ten (10) minutes net rest time per four (4) hours or a major fraction thereof. Defendant did not provide timely, duty-free rest breaks to Plaintiff and Employees.

Further, with respect to both meal and rest breaks, Plaintiff and Employees were prohibited from leaving the premises during their shifts. As a result, Defendant retained control over Plaintiff and Employees during their meal and rest periods. The California Supreme Court held, in *Augustus v. ABM Security Services Inc.* (2016) 2 Cal. 5th 257, that employees must be relieved of all duties during rest periods pursuant to Labor Code section 226.7 and Subdivision 12(A) of Wage Order 4. In *Augustus*, the Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained "that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties." *Id.* at 273. The Court found that the Wage Orders and the Labor Code require employers to "relinquish control over how employees spend their time" and "relieve employees of all duties" during employees' 10-minute rest periods. On-duty rest periods are prohibited. Plaintiff and Employees contend that they did not receive timely and compliant rest breaks. Labor Code section 226.7 entitles Plaintiff and Employees to premium payment in the form of one additional hour of pay at the Employee's regular rate of pay for each day they were denied compliant rest breaks.

Plaintiff and Employees contend that Defendant does not provide premium pay for each non-compliant meal and rest break it failed to provide, as required under Labor Code section 226.7.

Defendant's decision not to pay premium wages for noncompliant meal and/or rest periods is sufficient to allow class certification to seek the value of class-wide loss of the statutory benefits provided by Labor Code section 226.7. *See, e.g., Safeway Inc. v. Superior Court (Esparza)* (2015) 238 Cal. App. 4th 1138¹; *Cervantes v. Celestica Corporation, Adecco USA* (Central Dist. 2008) 253 F.R.D. 562; *Jernagin v. City of Los Angeles*, 2013 Cal. App. Unpub. LEXIS 3780; *Brewer v. General Nutrition*, 2014 U.S. Dist. LEXIS 159380; *Williams v. The Superior Court of Los Angeles County* (2013) 221 Cal. App. 4th 1353; and *Augustus v. ABM Security Services, Inc.* (2014) 233 Cal. App. 4th 1065. The same misconduct likewise gives rise to a representative action and penalties under the PAGA.

Plaintiff anticipates Defendant will argue their written policies are lawful. However, compliant written policies will not exonerate Defendant for noncompliant practices in actuality. The Court of Appeals has reconfirmed that employers may not avoid class certification (or liability) merely by adopting a written policy that may be facially compliant with the law:

Even if we assume (as the trial court did) that the Hospital's written meal and rest break policy is "facially legal" and its facial legality is undisputed by plaintiffs, ***the mere existence of a lawful break policy will not defeat class certification in the face of actual contravening policies and practices that, as a practical matter, undermine the written policy and do not permit breaks.*** (*See, e.g., Brinker, supra*, 53 Cal.4th at p. 1040 [an "employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks"]; *Jaimez, supra*, 181 Cal.App.4th at p. 1303; [*Ibid.*; *Boyd v. Bank of America Corp.* (2014) 300 F.R.D. 431, 442]; *cf. Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 963 [reversing summary judgment for employer based, in part, on evidence that truck drivers "felt pressured" not to take rest breaks, and management knew some drivers were not taking breaks].) *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal. App. 4th 383. [footnote omitted] [emphasis added].

As recently as August 30, 2019, in a California state court case that raises many of the same issues presented here – *to wit*, meal and rest break allegations without any premiums paid, along with derivative wage statement, waiting time, and unfair business practice claims - Santa Clara Superior Court Judge Thomas Kuhnle granted class certification. *See, Corinthian International Wage And Hour Cases JCCP 4886*. Pertinent to the court's determination was a continued focus on the employer's policies, ***even if***

¹ In *Safeway Inc. v. Superior Court (Esparza)* (2015) 238 Cal. App. 4th 1138, the California Court of Appeal for the Second District explained that such a uniform record of non-payment warrants class certification. In granting class certification, the trial court stated: "[Real parties] prove[] that[] before June 17, 2007, Safeway did not pay meal break premiums...Safeway does not contest this fact. Safeway had thousands or tens of thousands of workers, but for years it never paid statutory meal break premiums. Why? One explanation is human perfection: Safeway never, ever erred. This explanation is possible. But human perfection is rare. Another explanation is deep, system-wide error: that Safeway was unaware of, or for some other reason[,] violated[] its duty to pay statutory premiums when required. [¶] This situation presents the central and predominating common issue: did Safeway's system-wide failure to pay appropriate meal break premiums make it liable to the class during this period. This dominant common issue makes certification proper..." The trial court granted class certification, and the Court of Appeal affirmed, even though the defendant filed more than 2,000 class member declarations in an effort to oppose certification.

unofficial, that are common to the class. For example, in certifying the rest break subclass the court stated,

For purposes of liability, the question is not how many breaks Defendant ‘forced’ the drivers to miss, but whether Defendant had an unofficial policy of not providing breaks or created an atmosphere of discouraging [d]rivers from taking breaks.” Id. at pp. 7-8. [emphasis in original]

As a result, Plaintiff is confident in her ability to maintain a representative action for the vast majority of her wage-and-hour claims under the PAGA, if not all of them.

IV. Wage Statement and Payroll Records Violations.

Defendant has also failed to provide accurate itemized wage statements to Plaintiff and Employees in accordance with Labor Code section 226(a)(1, 2, 5, and 9) and to maintain accurate payroll records in accordance with Labor Code section 1174(d). Labor Code section 226 obligates employers, semi-monthly or at the time of each payment, to furnish an itemized wage 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;
- (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...;
- (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...

Due to Defendant’s failure to pay Plaintiff and Employees for all hours worked (*i.e.*, the failure to capture and pay for off-the-clock work) and the failure to provide lawful meal and rest breaks, the wage statements issued by Defendant, at a minimum, do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5), and (9). Lastly, the wage statements do not include premium payments made to, or that were owed, Plaintiff and Employees for non-compliant breaks. The wage statements issued by Defendant are fatally noncompliant.

As a result of Defendant’s violation of Labor Code section 226(a), Plaintiff and Employees suffered injury because, among other things: (a) the violations hindered them from determining the amounts of wages owed; (b) the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them and made it exponentially more difficult than if the wage statement contained the required accurate information; and (c) the wage statements inaccurately understated the wages, hours, and wage rates to which they were entitled. As a result of failing to provide

accurate itemized wage statements setting forth the information required by Labor Code section 226(a), Defendant has incurred liability that entitles Plaintiff and Employees to damages under Labor Code section 226(e) and/or penalties including those pursuant to Labor Code section 226.3 and the PAGA.

V. Waiting Time Penalties.

Labor Code section 203 states that if an employer fails to provide wages at the time of an employee's termination, then the employee's wages must continue as a penalty for up to thirty days. "A proper reading of § 203 mandates a penalty equivalent to the employee's daily wages for each day he or she remained unpaid up to a total of 30 days... Thus, the critical computation required by Section 203 is the calculation of a daily wage rate, which can then be multiplied by the number of days of nonpayment, up to 30 days." DLSE Opinion Letter of January 28, 2003, citing *Mamika v. Barca* (1998) 68 Cal. App. 4th 487, 492.

Defendant did not provide all wages due to Plaintiff and Employees at the time of their separation because they did not pay them amounts as alleged above, due and owing at the time of termination or within seventy-two (72) hours of their resignation. Therefore waiting-time penalties were triggered and Plaintiff and Employees are entitled to continuing wages as provided by Labor Code section 203.

Further, Labor Code section 204 expressly requires that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code section 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." Due to Defendant's failure to pay Plaintiff and the Employees in compliance with the Labor Code as described above, Defendant failed to timely pay the aggrieved employees within seven (7) days of the close of the payroll period in accordance with Labor Code section 204 on a regular and consistent basis.

VI. Unfair Competition Law.

By violating numerous wage-and-hour laws, Defendant engaged in unlawful business acts that have deprived Plaintiff, Employees, and all interested persons of the rights, benefits, and privileges guaranteed to all employees under law. *See*, Business and Professions Code § 17200, *et seq.* By committing the wage-and-hour violations enumerated above, Defendant has cut the costs of doing business and thus gained an unfair advantage over competitors who followed the law.

* * * * *

Pursuant to Labor Code section 2699.3(a), please advise within sixty (60) calendar days of this notice whether the LWDA intends to investigate and/or bring an action itself for the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of this notice, Plaintiff - individually and on behalf of other similarly situated aggrieved Employees - and the State of California may recover penalties pursuant to Labor Code section 2699.

July 13, 2020
Page 7 of 7

Sincerely,
CounselOne, PC



Anthony J. Orshansky

Filing Fee (Enclosed)
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Exhibit “B”

**NOTICE OF PRIVATE ATTORNEYS GENERAL ACT (PAGA) REPRESENTATIVE ACTION
SETTLEMENT**

Tapia, et al. v. Home and Body Company, Orange County Superior Court Case No. 30-2020-01155185-CU-OE-CXC

Reyes v. Home and Body Company, Orange County Superior Court Case No. 30-2020-01169522-CU-OE-CXC

This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED AS A NON-EXEMPT EMPLOYEE BY DEFENDANT HOME and BODY COMPANY (“DEFENDANT”) DURING THE PAGA PERIOD (JULY 1, 2019 through APRIL 30, 2022), THIS PAGA SETTLEMENT AFFECTS YOUR RIGHTS.

A settlement (the “Settlement”) has been reached in the lawsuits entitled *Tapia, et al. v. Home and Body Company*, Orange County Superior Court Case No. 30-2020-01155185-CU-OE-CXC and *Reyes v. Home and Body Company*, Orange County Superior Court Case No. 30-2020-01169522-CU-OE-CXC (the “Actions”), asserting claims under the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”). The purpose of this Notice is to advise you as to why you have received a portion of the Settlement proceeds. The Settlement resolves the Actions.

Who is affected by this proposed Settlement?

The Court has designated, for settlement purposes only, the following persons as “Aggrieved Employees”:

All non-exempt employees employed by Defendant in California at any time during the PAGA Period (the “PAGA Period” refers to the period from July 1, 2019 through April 30, 2022).

According to Defendant’s records, you are one of the Aggrieved Employees.

What is this case about?

In the Actions, Plaintiffs Veronica Tapia, Claudia Morales and Elizabeth Reyes asserted claims that Defendant violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) [Lab. Code § 2699, *et seq.*].

Defendant denied all liability and was confident that it had strong legal and factual defenses to these claims, but Defendant recognized the risks, distractions, and costs associated with continued litigation.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiffs and Defendant (the “Parties”), through their attorneys and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses but did approve the Settlement.

What are the Settlement terms?

Defendant will pay \$432,000 (the “Gross Settlement Amount”) for: (a) payment of \$186,658.12 to the Labor and Workforce Development Agency (“LWDA”) as its 75% share of PAGA penalties; (b) payment of \$62,219.37 to Aggrieved Employees as their 25% share of PAGA penalties, (c) payment of attorney’s fees of \$151,200 and litigation costs of \$17,702.51; and, (d) payment of administration costs of \$14,220.00 to the Settlement Administrator.

By operation of the Settlement’s terms, all Aggrieved Employees will release Defendant and their owners, shareholders, members, parent corporations or entities, sister corporations or entities, related and/or affiliated entities, subsidiaries, divisions, investors, partners, general partners, limited partners, directors, officers, employees, managers, supervisors, assigns, heirs, beneficiaries, predecessors, successors, attorneys, agents, and representatives, and all others related to them, and each of them (collectively, the “Released Parties”) from the PAGA claims for civil penalties based on alleged violations of California Labor Code violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2802, as well as the applicable provisions of the Industrial Wage Orders (the “Released Claims”).

The settlement payments to Aggrieved Employees are classified as other miscellaneous income and will be reported on IRS Form 1099-MISC, if required. Your share was calculated based on the number of pay periods you worked during the PAGA Period.

All checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not cashed within that time. Uncashed checks will be sent to the California State Controller’s Unclaimed Property division, in the name of the Aggrieved Employee.

The Settlement includes a release of PAGA claims asserted in the Action.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.