

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Thomas Segal (SBN 222791)
thomas@setarehlaw.com
3 Farrah Grant (SBN 293898)
farrah@setarehlaw.com
4 SETAREH LAW GROUP
420 North Camden Drive, Suite 100
5 Beverly Hills, California 90210
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff
ROY WITTBECKER
8

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA

12 ROY WITTBECKER, on behalf of himself,
13 and all others similarly situated, and the
14 general public,

15 Plaintiff,

16 vs.

17 CUPERTINO ELECTRIC, INC., a Delaware
corporation; and DOES 1 through 50,
18 inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No. 20CV368613 (CLASS)
Case No. 20CV371987 (PAGA)

Assigned for All Purposes to the Honorable
Theodore C. Zayner, Department 19

**DECLARATION OF SHAUN SETAREH IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS**

Date: May 7, 2025
Time: 1:30 p.m.
Place: Department 19

Class Action Complaint Filed: 07/27/2020
PAGA Complaint Filed: 10/23/2020

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

I, Shaun Setareh, declare as follows:

1. I am an attorney in good standing duly admitted to the State Bar of California, the principal attorney at Setareh Law Group, counsel of record for Plaintiff ROY WITTBECKER (“Plaintiff”) in this action against Defendant CUPERTINO ELECTRIC, INC. (“Defendant”) (Plaintiff and Defendant, collectively, the “Parties”). This declaration is made in support of Plaintiff’s Motion for Preliminary Approval of the Class Action Settlement and Certification of Settlement Class.

2. Except for those matters stated on information and belief, which I am informed and believe are true and correct, I have personal knowledge of all matters set forth herein. If called as a witness, I could and would competently testify thereto.

3. I received my undergraduate degree from UCLA in 1996 and my law degree from Loyola Law School in 1999. Since being admitted to the State Bar of California in 1999, I have actively practiced civil litigation for the entirety of that time period.

4. Setareh Law Group and I, as its principal attorney, are well-experienced class action attorneys. I, along with the senior attorney assigned to this case, Thomas Segal, have considerable experience in class action litigation. I, and the attorneys at Setareh Law Group, have been involved as lead class counsel, co-lead class counsel, and other levels of involvement in over 100 wage-and-hour, consumer, and antitrust class action cases. Because of this, Setareh Law Group has more than 250 Westlaw citable opinions, including the following noteworthy appellate decisions:

State Appellate Decisions

a. *Troester v. Starbucks Corporation, et al.*, 5 Cal.5th 829 (2018) (reversed summary judgment in favor of Defendants, issuing a landmark published decision that clarified and rejected the application of the widely adopted federal *de minimis* doctrine to California’s wage-and-hour laws). Due to the significance and importance of this seminal victory before the California Supreme Court, I received the California Lawyer of the Year or “CLAY” award from the Daily Journal for my work on the case.

b. *Allen v. Labor Ready Southwest, Inc.* (Cal.App. 2 Dist., 2013) 2013 WL 1910293 (reversing an Order from the Superior Court of Los Angeles County compelling Plaintiff's claims to

1 arbitration, finding that Defendant waived the right to compel arbitration by litigating the merits
2 of Plaintiff's arbitrable federal and state claims).

- 3 c. *LaCour vs. Marshalls of CA, LLC et al.*, 94 Cal. App. 5th 1172, 313 Cal. Rptr. 3d 77 (2023)
4 (Court of Appeal reversed the trial court's order granting Defendants' Motion for Judgment on
5 the Pleadings in a representative PAGA action).

6 *Ninth Circuit Decisions*

- 7 d. *Troester v. Starbucks Corp.*, 738 Fed. Appx. 562 (9th Cir. 2018) (Ninth Circuit opinion
8 following the California Supreme Court answering the Ninth Circuit's certified question).
- 9 e. *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. 2019) (vacated
10 district court's summary judgment in favor of Defendants and remanded for further
11 proceedings, holding that Defendants' Fair Credit Reporting Act disclosure form lacked
12 sufficient clarity in a published opinion).
- 13 f. *Ortiz v. Randstad Inhouse Services, LLC et al.*, 2024 WL 1070823 (9th Cir. 2024) (Ninth
14 Circuit held that warehouse workers are covered by the Federal Arbitration Act's transportation
15 worker exception and affirmed the District Court's order denying Defendants' Motion to
16 Compel Arbitration in a wage and hour class action).
- 17 g. *Rodriguez v. U.S. Healthworks*, 813 Fed.Appx. 315 (9th Cir. 2020) (reversed district court's
18 summary judgement in favor of Defendants with instructions to remand the action to state
19 court).
- 20 h. *Harris v. KM Industrial, Inc.*, 980 F.3d 694 (9th Cir. November 13, 2020) (affirmed the district
21 court's granting of Plaintiff's motion to remand, holding in a published opinion that Defendants
22 had failed to establish by a preponderance of the evidence that the amount in controversy
23 exceeded \$5 million as required under the Class Action Fairness Act for removal).
- 24 i. *Parsittie v. Schneider Logistics, Inc. et al.*, Case No. 20-55470 (9th Cir. June 9, 2021) (reversed
25 the district court's dismissal of Plaintiff's meal and rest break claims, holding that Plaintiff's
26 security check allegations were sufficient to state a claim for break-time violations and
27 remanding for further proceedings).
- 28 j. *Ahlstrom v. DHI Mortg. Co., Ltd., L.P.*, 21 F.4th 631 (9th Cir. December 29, 2021) (reversed

1 the district court's ruling compelling claims to arbitration, holding that parties cannot delegate
2 issues of formation of an arbitration agreement to the arbitrator for determination).

- 3 k. *Allen v. Bedolla*, 787 F.3d 1218 (9th Cir. June 2, 2015) (affirming the district court's Order
4 denying objector's motion to intervene and remanding to the district court where settlement was
5 granted final approval. Final approval was upheld on a subsequent appeal in the 9th Cir. [see
6 *Bedolla v. Allen*, 736 Fed.Appx. 614 (9th Cir. May 18, 2018)]).

7 **Class Counsel Appointments.** The following is a sampling of class actions in which the Setareh
8 Law Group and I have been appointed as class counsel:

9 *Federal Cases*

- 10 l. *Cerdenia v. USA Truck, Inc.*, U.S. District Court, Central District of California, Case No. 10-
11 CV-1489-JVS (granted final approval in an action on behalf of truck drivers for meal and rest
12 period violations, off-the-clock pre- and post-shift work, and unauthorized wage deductions).
13 m. *Fronza v. Staffmark*, U.S. District Court, Northern District of California, Case No. 15-CV-
14 02315-MEJ (granted final approval in a case involving alleged uncompensated security checks
15 for warehouse workers).
16 n. *Garcia v. Am. Gen. Fin. Mgmt. Corp.*, U.S. District Court, Central District of California, Case
17 No. 09-CV-1916 (granted final approval in a case filed on behalf of account managers in case
18 involving, among other things, alleged overtime miscalculations and meal and rest period
19 violations).
20 o. *Jones v. Shred-It USA, Inc.*, U.S. District Court, Central District of California, Case No. 11-CV-
21 00526 (granted final approval in a case brought on behalf of customer service representatives
22 and balers for alleged off-the-clock work and meal and rest period violations).
23 p. *O'Neill v. Genesis Logistics, Inc.*, U.S. District Court, Northern District of California, Case No.
24 08-CV-4707 (granted final approval in a case involving claims for failure to provide meal
25 periods to employees who worked as drivers delivering goods to 7-11 stores throughout
26 California and failure to pay final wages in a timely manner to terminated employees).
27 q. *Padilla v. UPS*, U.S. District Court, Central District of California, Case No. 08-CV-1590
28 (granted final approval in a case involving claims for failure to provide meal periods to part time

- 1 employees engaged in sort operations and failure to pay final wages in a timely manner to
2 terminated employees).
- 3 r. *Pitre v. Wal-Mart Stores, Inc.*, U.S. District Court, Central District of California, Case No. 17-
4 cv-01281-DOC (granting class certification in a highly contested Action against Wal-Mart for a
5 class of almost 5,000,000 in a Fair Credit Reporting Act action).
- 6 s. *Utne v. Home Depot U.S.A., Inc.*, U.S. District Court, Northern District of California, Case No.
7 16-cv-01854-RS (granting class certification in a highly contested Action against Home Depot
8 in connection with uncompensated off-the-clock work occurring at the start of all employee
9 shifts and at the end of closing shifts).
- 10 t. *Vang v. Burlington Coat Factory Warehouse Corp.*, U.S. District Court, Central District of
11 California Case No. 09-CV-8061 (granted final approval in a case involving, among other
12 things, vacation pay forfeitures, failures to provide meal and rest periods, and failures to pay
13 overtime wages based on employee misclassification).
- 14 u. *Wilson v. TE Connectivity*, Northern District of California Case No. 3:14-cv-04872-EDL
15 (granted class certification through contested motion in case on behalf of manufacturing facility
16 employees subject to auto-deduction of meal breaks).

17 State Cases

- 18 v. *Sandoval v. Rite Aid Corp.*, Los Angeles County Superior Court, Case No. BC431249 (granted
19 class certification through contested motion in case on behalf of former pharmacy employees
20 based on late final wage payments in violation of Labor Code §§ 201–203; subsequently
21 granted final approval of class action settlement).
- 22 w. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case No. BC421485 (granted
23 class certification through contested motion in case on behalf of former security workers based
24 on late final wage payments in violation of Labor Code §§ 201–203; subsequently granted
25 preliminary approval of proposed class action settlement).

26 5. I am the owner and managing attorney of Setareh Law Group. All strategic decisions
27 regarding the selection of clients to represent and the major strategic decisions for each client fall to me
28 to make or approve. I bear all of the risk associated with the operation of a law firm. As a result, my

scope of responsibility is substantially greater than an attorney of equal years of experience who does not bear these additional obligations.

6. As the above shows, the Setareh Law Group and I have substantial experience in wage-and-hour class action litigation, including actions alleging failure to provide meal and/or rest periods, failure to pay wages, failure to provide accurate wage statements, failure to provide timely final wage payments, and other related claims. We are knowledgeable about the applicable law and have worked diligently to investigate and identify the potential claims in this action. I will continue to commit my firm's resources to further the interests of the Class. Setareh Law Group and I have no known conflicts of interest with Plaintiff or with absent Class Members.

Parties

7. Defendant Cupertino Electric, Inc. is a prominent electrical engineering and construction company in the United States.

8. Plaintiff Roy Wittbecker worked for Defendant as an hourly non-exempt employee as a Mobile Mechanic in California from approximately March 6, 2019, to July 8, 2019.

Complaints

9. On July 7, 2020, Plaintiff submitted written notice of various alleged California Labor Code violations to the LWDA pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code section 2699, *et seq.* Plaintiff submitted a second notice to the LWDA clarifying that the scope of Plaintiff’s PAGA claims included all employees who were subject to the violations alleged in Plaintiff’s July 7, 2020 notice to the LWDA.

10. On July 27, 2020, Plaintiff initiated this putative class action by filing a Class Action Complaint in Santa Clara County Superior Court, Case No. 20CV368613, on behalf of himself and all current and former non-exempt employees employed by Defendant in California, alleging the following causes of action: (1) failure to pay hourly wages, minimum wages, and overtime; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to pay vacation wages; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay all wages timely upon termination; (8) violation of California

1 Business and Professions Code section 17200, *et seq.*; and (9) violation of the Fair Credit
2 Reporting Act (“FCRA”) (“Class Action”).

3 11. On October 23, 2020, Plaintiff filed a subsequent Complaint in Santa Clara County
4 Superior Court, Case No. 20CV371987, asserting a single a claim for civil penalties pursuant to
5 PAGA based on the alleged violations of the following Labor Code sections: 201, 202, 203, 204, 210,
6 223, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1198 and 2802 (“PAGA Action”). The two actions
7 have since been consolidated.

8 12. On February 4, 2025, Plaintiff submitted an amended PAGA letter to the Labor &
9 Workforce Development Agency that (a) attaches the operative Complaint in the Class Action; and
10 (b) asserts all of the alleged Labor Code violations alleged in the Class Action and PAGA Action.
11 Following the sixty-five-day exhaustion period under Labor Code section 2699.3 expiring, Plaintiff
12 and Class Counsel shall file an amended consolidated Complaint that includes all of the allegations
13 and alleged Labor Code violations currently alleged in the Class Action and PAGA Action.

14 *Law and Motion*

15 13. On September 2, 2020, Defendant removed the case to United States District Court
16 of the Northern District of California. On February 24, 2021, Plaintiff filed a Motion to Remand.
17 Plaintiff’s motion was fully briefed and granted.

18 14. On April 21, 2023, Defendant brought a Motion for Judgment on the Pleadings as to
19 Plaintiff’s FCRA claim, which was granted on August 8, 2023.

20 15. Plaintiff filed a Motion to Compel Regarding Defendant’s Responses to Special
21 Interrogatories, Set One, and Request for Production, Set One, which was granted on September 21,
22 2023. The parties engaged in the Belaire West notice process and Plaintiff received a sampling of
23 contact information for those putative class members who did not opt out. Plaintiff’s counsel
24 interviewed multiple putative class members and obtained declarations in anticipation of filing a
25 motion for class certification.

26 16. On March 15, 2024, the parties engaged in an Informal Discovery Conference
27 regarding Plaintiff’s deposition and Defendant providing time and pay data for putative class
28 members.

17. On April 16, 2024, the Parties stipulated to consolidate the Class Action (Case No. 20CV368613) and the PAGA Action (Case No. 20CV371987), with Case No. 20CV368613 being designated as the lead case for all purposes (collectively, “the Action”).

18. On May 17, 2024, Defendant filed a Motion for Summary Judgment or, in the Alternative, Summary Adjudication. A true and correct copy of Defendant's motion is attached hereto as **Exhibit 1**.

Factual Allegations

19. Plaintiff alleges that Plaintiff and putative class members' meal and rest breaks were not scheduled and that they were sometimes not provided in a timely fashion. Additionally, Plaintiff alleges that Defendant did not record when meal breaks were taken or if they were provided. Plaintiff alleges that Defendant automatically deducted time for a meal break from pay whether a meal break was provided or not. Plaintiff alleges that Plaintiff and putative class members were not paid for time spent traveling from their homes to worksites and back even though they were required to transport necessary tools and Personal Protective Equipment "PPE" to and from the jobsite. Sometimes class members traveled several hours from their homes to the jobsite, and they were not compensated for that time by Defendant. Additionally, Plaintiff asserts that Defendant did not factor in Plaintiff's Per Diem pay when calculating his regular rate of pay for overtime and/or double time. Plaintiff also alleges that he and putative class members were not paid for all vested paid vacation days. Plaintiff further asserts he was not reimbursed for tool business expenses or mileage incurred while traveling to and from work sites. Finally, Plaintiff alleges that because of these discrepancies, Defendant failed to provide accurate wage statements and failed to timely pay all wages owed to him and other former employees all wages owed upon separation of employment.

20. Defendant asserts that the vast majority of its employees were employed as a union worker whose employment was governed by a collective bargaining agreement ("CBA"). Defendant states that Plaintiff's employment with Defendant was governed by a CBA that exhaustively covered his hours, wages, and working conditions. Defendant asserts that Plaintiff's claims rest upon the CBA and within the context of the Labor Management Relations Act ("LMRA"), not as state law claims before this Court. Specifically, as discussed further in Defendant's Motion for Summary Judgment, Defendant argues that Plaintiff's employment with Defendant was governed by an expansive CBA and therefore that Plaintiff's claims

1 are expressly exempt from the Labor Code and preempted by the LMRA. Defendant states in their
2 Motion for Summary Judgment:

- 3 • Overtime — Under Labor Code section 514, employees are exempt from
4 California's overtime laws where, as here, the employee is covered by a CBA
that provides the employee's hours of work, wages, and working conditions.
- 5 • Meal Periods — Under Labor Code section 512 and Industrial Wage Order
6 16(10), employees in the construction industry are exempt from California's meal
7 period laws where, as here, the employee is covered by a CBA that provides (a)
8 the employee's hours of work, wages, and working conditions; (b) an hourly and
overtime rate of pay no less than 30% more than the state minimum wage; and
9 (c) arbitration for disputes.
- 10 • Rest Breaks — Under Industrial Wage Order 16(11), employees in the
construction industry are exempt from California's rest break laws if, as here,
11 the employee is covered by a CBA that provides equivalent protection for rest
breaks as the Wage Order.
- 12 • Pay Periods — Under Labor Code section 204, employees are exempt from
California's pay period requirements where, as here, the employee is covered by a
CBA that provides different pay timing requirements than the Labor Code.
- 13 • Overtime, Hourly Wages, Minimum Wage, Meal Periods, Rest Breaks, Business
14 Expenses, Wage Statements, Pay Periods, Vacation Wages and Final Pay —
15 Plaintiffs state law claims for overtime, hourly wages, minimum wage, meal
16 periods, rest breaks, business expenses, wage statements, pay periods, vacation
wages, and final pay are preempted by the LMRA because the claims are based
on rights created by the CBA or otherwise require interpretation of the CBA to
adjudicate those rights.

Defendant's MSJ page 1.

17 Defendant further contends that Plaintiff cannot establish the requirements to certify a class.
18 Defendant also contends that Plaintiff's claims are incapable of being manageably tried as a class or
19 PAGA representative action. Defendant asserts that pursuant to the CBA, Plaintiff received a 30-minute
20 meal period between the fourth and fifth hour of work, as well as two 15-minute rest breaks, during
21 each eight-hour day. Moreover, Defendant states that if Plaintiff worked more than two and one-half
22 hours after his regularly scheduled quitting time, he was entitled to a second meal period. If Plaintiff
23 for some reason did not receive a meal period to which he was entitled, Defendant asserts that he
24 received a premium of \$15.00 plus 30 minutes of pay. Defendant states that pursuant to the CBA,
25 Plaintiff received a \$50 per diem to cover mileage and subsistence while traveling. The Industrial
26 Wage Orders provide that employers are not required to reimburse employees for tools or other
27 equipment customarily required by a particular trade or craft if the employee earns at least two times the
28

1 state minimum wage. (*See* Indus. Wage Order 16(8)(B).) Defendant argues that Plaintiff's claim for
2 failure to reimburse him for tools under Labor Code section 2802 fails because Plaintiff earned \$45.36
3 for each regular hour worked (nearly four times the State minimum wage in 2019), and the tools that
4 Plaintiff used in connection with his job were those customarily required in the mechanic trade/craft.
5 Defendant argues that although Plaintiff was expected to furnish his own basic tools, Defendant
6 provided overalls, gloves, and laundry service for jobs requiring exceptionally dirty work. Defendant
7 asserts that for union employees like Plaintiff, accrued vacation (if any) is solely dictated by the
8 terms of the governing CBA. Defendant states that the CBA does not provide union employees
9 accrued vacation, and as such Plaintiff was not entitled to accrue any vacation.

10 Defendant denies all of Plaintiff's allegations and contends it has fully complied with all
11 applicable laws and regulations in connection with its employment of Plaintiff and the employees he
12 seeks to represent. Defendant asserts that to prove whether any particular employee was not provided the
13 opportunity to take a meal or rest periods on any given day would require an individualized inquiry that
14 would prevent this issue from being resolved on a class and/or representative basis. Defendant asserts
15 that California law does not require employers to pay for time spent commuting from home to job sites,
16 even if the employees are transporting tools and PPE to jobsites. Similarly, Defendant argues that
17 California law does not require employers to pay for mileage costs incurred in commuting to and from
18 worksites as part of employees' ordinary commute. Defendant asserts that they appropriately calculated
19 the regular rate of pay in compliance with California law. And, in any event, such allegations involve
20 highly individualized circumstances as to prevent class certification and representative action treatment
21 should this case be litigated. Defendant argues that Plaintiff's claims for accurate wage statements, final
22 pay unfair competition claim, and PAGA are derivative in nature, and therefore preempted and fail
23 since the underlying claims upon which they are premised are preempted and fail. (*See, e.g., Giles v.*
24 *Canus Corp.* (N.D. Cal. Aug. 16, 2022) 2022 U.S. Dist. LEXIS 146789, at *14-15; *See Aleksick v. 7-*
25 *Eleven, Inc.* (2012) 205 Cal. App. 4th 1176, 1185).

26 *Discovery*

27 21. Plaintiff and Defendant engaged in formal and informal discovery prior to resolving the
28

1 Action.

2 22. Defendant produced Plaintiff's CBA and argued that Plaintiff's employment with
3 Defendant was governed by a CBA that exhaustively covered his hours, wages, and working
4 conditions. Defendant asserts that Plaintiff's employment with Defendant was governed by an
5 expansive CBA and therefore that Plaintiff's claims are expressly exempt from the Labor Code and
6 preempted by the LMRA.

7 23. Leading up to the mediation, the Parties engaged in extensive formal and informal
8 discovery and exchange of information and documents. Defendant propounded a set of document
9 requests, to which Plaintiff responded. Plaintiff propounded written discovery as well, to which
10 Defendant responded and produced thousands of pages of documents and other information,
11 including, but not limited to, Collective Bargaining Agreements, policy documents and records
12 relating to Plaintiff's employment. The parties engaged in multiple Informal Discovery Conferences
13 ("IDCs"). Plaintiff filed a Motion to Compel Regarding Defendant's Responses to Special
14 Interrogatories, Set One, and Request for Production, Set One, which was granted. The parties
15 engaged in the Belaire West notice process and Plaintiff received a sampling of contact information
16 for those putative class members who did not opt out. Plaintiff's counsel interviewed multiple
17 putative class members and obtained declarations in anticipation of filing a motion for class
18 certification. Defendant deposed Plaintiff on March 27, 2024.

19 24. In addition to this exchange of formal discovery, the Parties agreed to attend mediation to
20 attempt to resolve the action entirely and further agreed to engage in informal discovery in advance and
21 in preparation thereof. In preparation for mediation, Plaintiff requested and Defendant provided
22 substantial informal discovery, including production of additional policy documents, putative class
23 members' time and pay records, employee headcounts and pay period counts, and other information
24 requested by Plaintiff.

25 25. From the data and other documents obtained from Defendant pertaining to the Class and
26 Defendant's policies, Plaintiff's expert was able to analyze the data sampling, and Plaintiff was then able
27 to thoroughly assess the merits of each claim.

28 *Mediation*

1 26. On February 21, 2022, the Parties participated in mediation before Michael
2 Dickstein, a respected mediator for wage and hour class actions. The Parties were unable to reach
3 a settlement at that time.

4 27. On May 29, 2024, the Parties participated in a second mediation before David
5 Rotman, Esq. another respected mediator for wage and hour class actions, and through the
6 Mediator's efforts were able to reach a settlement in principle, subject to the Court's approval. The
7 settlement discussions were conducted at arm's-length, and the settlement is the result of an
8 informed and detailed analysis of Defendant's potential liability of total exposure in relation to the
9 costs and risks associated with continued litigation. The case settled following acceptance of a
10 mediator's proposal

11 28. A true and correct copy of the Stipulation of Class and Representative Action Settlement
12 (the "Settlement") executed by the Parties is attached hereto as **Exhibit 2**. A true and correct copy of the
13 Class Notice attached as **Exhibit A** to the Settlement.

14 29. I believe that the Settlement is in the best interest of the class members based on our
15 investigation and discovery, our detailed understanding of the issues raised, and the outcome of extensive
16 settlement negotiations.

17 30. Each of the Parties, represented by its respective counsel, recognized the risk of an
18 adverse result in the Action. The parties agreed to settle the case and resolve all claims against
19 Defendant. I believe the proposed settlement is fair, reasonable, and adequate in light of the complexities
20 of the case, the uncertainties of further litigation, and that it represents a fair and reasonable recovery for
21 the Settlement Class. The Parties have not engaged in any collusion or improper negotiations. The
22 Parties do not have any agreements regarding the proposed Settlement that are not reflected in the
23 Settlement.

24 At the time of mediation, Defendant provided certain data points that included payroll data for
25 the putative class during the relevant class period. This enabled Plaintiff's damages expert to review the
26 data and to prepare a comprehensive damage analysis for the purposes of mediation.

27 The following chart provides the estimated potential recovery on a class basis that Plaintiff
28 believes he could reasonably achieve *if he were to prevail on all his causes of action*:

Plaintiff's Estimated Potential Recovery		
Assumptions During Class Period (based on time/payroll data provided by Defendant) Shift Count: 3,144,110; Average Regular Rate of Pay: \$58.39/hour		
Cause of Action	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Off-the-Clock Work	\$9,179,199	3,144,110 shifts x 1 hour Off-the-Clock Work Per Shift for 5% of shifts x \$58.39 Avg. Rate
Working Through Meal Breaks ¹	\$8,658,764	2,965,838 shifts Where Meal Periods Required using Meal Period violation rate of 5% x \$58.39 Avg. Reg. Rate
Rest Period Premiums	\$8,791,864	3,011,428 shifts where Rest Periods Required using Rest Period violation rate of 5% x \$58.39 Avg. Reg. Rate
Vacation Pay	\$2,386,983	10,220 putative class members assuming each entitled to 4 hours of unprovided Vacation Pay x \$58.39 Avg. Reg. Rate
Failure to Reimburse Business Expenses	\$511,000	10,220 putative class members assuming each incurred business expenses of \$50
<i>Sub-Total Potential (Excluding Wage Statement Violations, Waiting Time Penalties and PAGA)</i>²	\$29,527,810	

¹ Plaintiff has not included damages for meal period premiums or overtime as those damages are valued at \$0 in part because of CBA preemption. Under Labor Code § 514, employees are exempt from California's overtime laws where, as it appears here, the employee is covered by a CBA that provides the employee's hours of work, wages, and working conditions. Under Labor Code section 512 and Industrial Wage Order 16(10), employees in the construction industry are exempt from California's meal period laws where, as it appears here, the employee is covered by a CBA that provides (a) the employee's hours of work, wages, and working conditions; (b) an hourly and overtime rate of pay no less than 30% more than the state minimum wage; and (c) arbitration for disputes. Additionally, even where there is a valid CBA which qualifies for the Labor Code § 512 meal period exemption, the employer still must pay at least minimum wage to an employee who does not receive a compliant duty free meal period. *Huerta v. CSI Electrical Contractors*, 15 Cal.5th 908, 935 (2024.) Thus, Plaintiff's focus at mediation was on Plaintiff's off-the-clock and expense reimbursement claims. Despite being valued at \$0, the meal premium and overtime claims are included in the release as Defendant wants a release for all claims made.

² Civil penalties are estimated and interest is not included in this analysis. This is proper because,

Wage Statement Violations	\$21,726,500	434,530 pay periods times \$50 penalty amount
Waiting Time Penalties	\$123,754,101	8,831 terminated employees x 240 hours x \$58.39 Avg. Reg. Rate
Sub-Total Potential (Excluding PAGA)	\$175,008,411	
PAGA Penalties	\$8,662,540	\$100 per pay period for violation of Labor Code section 226.7 (meal and rest breaks) with 409,288 pay periods assuming 5% of pay periods had a violation. \$2,046,440. \$250 per pay period penalty for violation of Labor Code section 226(a) for failure to provide accurate wage statements with 409,288 pay periods assuming 5% of pay periods had a violation. \$5,116,100. \$100 per pay period penalty for violation of Labor Code section 2802 for failure to reimburse for 15,000 pay periods (assuming each of the 7,500 PAGA members incurred unreimbursed business expenses on 2 pay periods). \$1,500,000
TOTAL	\$183,670,951	

Consequently, the settlement sum of **\$9,675,000** represents about 32.7% of the estimated \$29,527,810 exposure for claims for damages under the Labor Code, assuming these amounts could be proven at trial. Despite a total potential recovery of \$183,670,951 on his class claims, Plaintiff recognizes the challenges he faces in certifying a class action and establishing liability on the underlying wage and hour claims. Plaintiff estimates that his likelihood of prevailing on all his causes of action are extremely

first, PAGA penalties are discretionary (see Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser amount than the maximum civil penalty amount specified by this part...”), and because courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2000) 563 F.3d 948, 955; see also *Miller v. CEVA Logistics U.S.A., Inc.* (E.D. Cal. Feb. 19, 2015) 2015 WL 729638, at *7(court utilized calculation of a defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).)

1 low and thus his likelihood of recovering the maximum possible exposure on behalf of a class is very
2 unlikely.

3 For those claims, if any, that are certified for class treatment, Plaintiff must prevail at a trial on
4 the merits. In addition to having to prove that Plaintiff and other workers were not paid for all hours
5 worked, Plaintiff must establish willfulness with respect to his waiting time penalties claim under Labor
6 Code Section 203 as well as a knowing and intentional violation under Labor Code Section 226 for wage
7 statement penalties.

8 With respect to the claims asserted on behalf of the Settlement Class in this case, there are
9 significant risks that support the reduced compromise amount. These risks include, but are not limited to,
10 the following:

11 (i) The risk that the Court would find that Plaintiff and putative class member's claims
12 rest upon the CBA and within the context of the Labor Management Relations Act ("LMRA"), not
13 as state law claims before this Court. This includes the risk that the Court would find that Plaintiff and
14 putative class members' employment with Defendant is expressly exempt from the Labor Code and
15 preempted by the LMRA. If the Court made such a ruling, Plaintiff could potentially not recover
16 anything at trial. Plaintiff does not include damages for meal period premiums or overtime as those
17 damages are valued at \$0 because of CBA preemption. Under Labor Code section 514, employees
18 are exempt from California's overtime laws where, as here, the employee is covered by a CBA that
19 provides the employees' hours of work, wages, and working conditions. Under Labor Code section
20 512 and Industrial Wage Order 16(10), employees in the construction industry are exempt from
21 California's meal period laws where, as here, the employee is covered by a CBA that provides (a) the
22 employee's hours of work, wages, and working conditions; (b) an hourly and overtime rate of pay no less
23 than 30% more than the state minimum wage; and (c) arbitration for disputes.

24 (ii) The risk that Plaintiff would be unable to establish liability for allegedly unpaid straight
25 time and overtime wages. *See Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 39 & fn. 33
26 ("*Duran*"), citing *Dilts v. Penske Logistics, LLC* (S.D. Cal. 2014) 2014 WL 205039 (dismissing certified
27 off-the-clock claims based on proof at trial).

28 (iii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide

1 compliant meal periods and rest breaks; or that to establish liability for the failure to provide compliant
2 meal periods and rest breaks would require an individualized inquiry that would prevent these issues
3 from being resolved on a class and/or collective basis. For example, Plaintiff alleged that that some meal
4 and rest breaks were not timely provided due to work constraints. Defendant asserts that it provides
5 meal periods to employees and authorizes and permits them to take rest periods, and pays meal and rest
6 period premiums, in accordance with applicable law. Defendant asserts that to prove whether any
7 particular employee was not provided the opportunity to take a meal or rest periods on any given day
8 would require an individualized inquiry that would prevent this issue from being resolved on a class
9 and/or representative basis.

10 (iv) The risk that Defendant's challenged employment policies might not ultimately support
11 class certification or a class-wide liability finding, *see, Duran*, 59 Cal.4th at 14 & fn. 28 (citing Court of
12 Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability
13 of proposition). Defendant has contended, for example, that it did not have a purported policy of not
14 paying required compensation, but rather a policy of paying compensation and of requiring employees to
15 report any unpaid compensable time, and that any failures to report by employees cannot be legally
16 charged to Defendant and, in any event, involve such highly individualized circumstances as to prevent
17 class certification and representative action treatment should this case be litigated. *See, e.g., Morillion v.*
18 *Royal Packing Co.* (2000) 22 Cal.4th 575, 585 (employer not required to pay employees for time spent
19 performing work of which the employer had no knowledge).

20 (v) For the same reasons, liability, damages recovery, and certification risks are heightened
21 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and
22 practices could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2)
23 the risk that individual differences between settlement Class Members could be construed as pertaining
24 to liability, and not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class or
25 collective treatment could be deemed improper as to one or more claims except for settlement purposes.

26 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
27 discretion, which would materially impact the recovery by the Class. *See* Labor Code section 2699(e)(1).

28 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification

1 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
2 opposed to unpredictable litigation.

3 (viii) Although the PAGA penalties calculated by Plaintiff's expert amounts to an extravagant
4 \$8,662,540, that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision
5 as to the amount of penalties is always up to the discretion of the Court.

6 (ix) The risk that the Court would find that Defendant's reimbursement policies were compliant.

7 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
8 reasonable recovery for the Class Members. The Settlement amount is, of course, a compromise figure.
9 By necessity, it took into account risks related to liability, damages, class action certification, and all the
10 defenses asserted by Defendant as to all such matters. Moreover, each Settlement Class Member will be
11 given the opportunity to opt out of the Settlement, allowing those who feel they have claims that are
12 greater than the benefits they can receive under this Settlement to pursue their own claims.

13 In these respects, Defendant strongly denies any liability and the propriety of class certification
14 for any reason other than settlement. Continued litigation of this lawsuit presented Plaintiff and
15 Defendant with substantial legal risks that were (and continue to be) very difficult to assess.

16 31. Under these standards, Plaintiff's claims are typical of those of the class members. Like
17 Class Members, Plaintiff was an hourly non-exempt employees of Defendant in California. Plaintiff
18 alleges he was not paid for all hours worked, was not provided with compliant meal periods and rest
19 breaks, was not reimbursed for business expenses, did not receive accurate wage statements, and was not
20 paid all wages due upon separation of employment. *See Classen, supra*, 145 Cal. App. 3d at 46
21 (representative plaintiffs need not have all claims or identical interests with class members; they need
22 only have claims that are "typical of the class"); *see also B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*
23 (1987) 191 Cal. App. 3d 1341, 1347 (representative plaintiffs need not suffer all of the exact same
24 damages as every class member). Accordingly, Plaintiff pursues claims typical of the class he seeks to
25 represent. Plaintiff has no conflict of interest with the Settlement Class Members and has agreed to place
26 the Class interests above his own. Setareh Law Group also has no conflicts of interest with the
27 Settlement Class Members.

28 //

1 *Service Award*

2 32. The requested service award of \$12,000 to Plaintiff Roy Wittbecker is warranted.
3 Plaintiff spent considerable time speaking with his counsel, gathering documents, responding to
4 discovery requests, being deposed, participating in discussions regarding settlement, and reviewing the
5 Settlement. Plaintiff also took on the risk of facing intrusive discovery, facing a potential costs award,
6 and the risk that being involved in litigation would be viewed unfavorably by potential employers.

7 *Attorneys' Fees*

8 33. The amount of Class Counsel's fee request (33¹/₃% of the Gross Settlement Amount) is
9 reasonable as a percentage of the settlement fund. I have been awarded attorneys' fees equaling
10 approximately one-third of the fund in several recent wage and hour class actions, including, but not
11 limited to: *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No.
12 CIVRS1107056 (one-third of settlement fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County
13 Superior Court, Case No. BC439558 (one-third of settlement fund); *Perez v. Southwest Dealer Services,*
14 *Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of settlement fund); *Alvarez v.*
15 *Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of
16 settlement fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-
17 CU-OE-CTL (one-third of settlement fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior
18 Court, Case No. CIVRS1001579 (one-third of settlement fund); *Huynh v. Carefusion Resources, LLC, et*
19 *al*, San Diego County Superior Court, Case No. 37-2009-00103277-CU-OE-CTL (one-third of
20 settlement fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles County Superior Court, Case No.
21 BC456080 (one-third of settlement fund); *Sandoval v. Thrifty Payless, Inc.*, Los Angeles County
22 Superior Court, Case No. BC431249 (one-third of settlement fund); *Tucker v. Maly's West, Inc.*, Los
23 Angeles County Superior Court, Case No. BC483920 (one-third of settlement fund); *Twari v. Merrill's*
24 *Packaging*, San Mateo Superior Court, Case No. 519070 (one-third of settlement fund); *Montgomery v.*
25 *Del Monte Corp., et al*, Kings County Case No. 13C0204 (one-third of settlement fund); *Adams v.*
26 *Medical Staffing Network, et al*, Sacramento County Case No. 34-2012-00137491-CU-OE-GDS (33% of
27 gross settlement fund).

28 //

1 *Settlement Administrator*

2 34. The Parties propose Simpluris, Inc. (“Simpluris”) as the administrator in this matter. The
3 parties obtained bids from no less than three established class action settlement administrators: Phoenix,
4 Simpluris, and ILYM. Ultimately, Simpluris was selected due their experience and the pricing of their
5 bid. Simpluris is an experienced class action settlement administrator. Based on my experience,
6 Simpluris’ estimated administration costs of \$36,500 are reasonable for a settlement of this size.

7 *LWDA Notice*

8 35. My firm will upload copies of the Settlement and the Motion for Preliminary Approval of
9 Class Action Settlement and Certification of Settlement Class to the California Labor Workforce and
10 Development Agency (“LWDA”).

11 *Class Size*

12 36. Defendant ha represented that there are approximately 10,220 Class members.

13 *Cy Pres*

14 37. The parties propose the Labor Dispute Cy Pres Fund at San Francisco State University as
15 the cy pres. A declaration explaining why they are an appropriate cy pres recipient is attached hereto as
16 **Exhibit 3**. The parties are willing to meet and confer and select another cy pres recipient at the
17 Court’s request. Plaintiff has no involvement in the governance of the proposed cy pres recipient.

18 I declare under the penalty of perjury of the laws of the State of California that the foregoing
19 is true and correct to the best of my knowledge. Executed March 19, 2025 in Beverly Hills,
20 California.


ID bnpheioDDVnvs3ZDRgEtWLC6

21 Shaun Setareh

eSignature Details

Signer ID:	bnpheioDDVnvs3ZDRgEtWLC6
Signed by:	Shaun Setareh
Sent to email:	shaun@setarehlaw.com
IP Address:	12.160.160.211
Signed at:	Mar 19 2025, 12:18 pm PDT

EXHIBIT 1

Mia Farber (State Bar No. 131467)
JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5408
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
E-mail: Mia.Farber@jacksonlewis.com

Scott P. Jang (State Bar No. 260191)
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, California 94111-4615
Telephone: (415) 394-9400
Facsimile: (415) 394-9401
E-mail: Scott.Jang@jacksonlewis.com

Isabella L. Shin (State Bar No. 294937)
JACKSON LEWIS P.C.
160 West Santa Clara Street., Suite 400
San Jose, California 95113
Telephone: (408) 579-0404
Facsimile: (408) 454-0290
E-mail: Isabella.Shin@jacksonlewis.com

Attorneys for Defendant
CUPERTINO ELECTRIC, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

ROY WITTBECKER, on behalf of himself, and
all others similarly situated,

Plaintiff,

vs.

CUPERTINO ELECTRIC, INC., and DOES 1
through 50, inclusive,
Defendants.

Lead Case No. 20CV368613
Consolidated with Case No. 20CV371987

CLASS AND REPRESENTATIVE ACTION

[Assigned for All Purposes to Hon. Theodore C.
Zayner]

**DEFENDANT CUPERTINO ELECTRIC,
INC.'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION**

Date: October 9, 2024
Time: 1:30 p.m.
Court: Dept. 19
Judge: Hon. Theodore C. Zayner

Complaint Filed: July 27, 2020
Trial Date: None

TABLE OF CONTENTS

	Page
I. INTRODUCTION	6
II. BACKGROUND	7
A. Factual Background	7
1. The Parties	7
2. Plaintiff's Employment was Governed by a Collective Bargaining Agreement.....	8
B. Procedural History	11
III. LEGAL STANDARD.....	11
IV. LEGAL ARGUMENT	11
A. Labor Code and Wage Order Exemptions	12
1. Overtime	12
B. Meal Periods	12
C. Rest Breaks	13
D. Timing of Pay	13
E. Business Expenses	14
F. LMRA Preemption.....	14
1. Step 1 – Preemption of Overtime, CBA Hourly Wages, Meal Period, Rest Break, Business Expenses, and Timing of Pay Claims	15
2. Step 2 – Preemption of Overtime, CBA Hourly Wages, Minimum Wage, Meal Periods, Rest Breaks, Vacation Pay, Wage Statements, and Final Pay Claims	16
G. Residual Claims: Unfair Competition and Non-Individual PAGA Claims	20
H. Plaintiff's Deposition Testimony Further Confirms that He Lacks a Viable Claim for Unpaid Vacation Wages or Unreimbursed Business Expenses	22
IV. CONCLUSION.....	24

TABLE OF AUTHORITIES

Page(s)

Federal Cases

<i>Allis-Chalmers Corp. v. Lueck</i> (1985) 471 U.S. 202	15
<i>Burnside v. Kiewit Pac. Corp.</i> (9th Cir. 2007) 491 F.3d 1053	15, 17
<i>Curtis v. Irwin Industries</i> (9th Cir. 2019) 913 F.3d 1146	15, 16, 17
<i>Franchise Tax Board v. Constr. Laborers Vacation Trust</i> (1983) 463 U.S. 1	11, 15
<i>Giles v. Canus Corp.</i> (N.D. Cal. Aug. 16, 2022) 2022 U.S. Dist. LEXIS 146789	21
<i>Marquez v. Toll Global Forwarding USA Inc.</i> (9th Cir. 2020) 804 Fed. Appx. 679	19, 20
<i>Marquez v. Toll Global Forwarding USA Inc.</i> (C.D. Cal. June 28, 2018) 2018 U.S. Dist. LEXIS 109463	19, 20
<i>Rodriguez v. Gonsalves & Santucci, Inc.</i> (N.D. Cal. Jan. 18, 2022) 2022 U.S. Dist. LEXIS 8645	18, 19
<i>Zayerz v. Kiewit Infrastructure West</i> (C.D. Cal. Jan. 18, 2018) 2018 U.S. Dist. LEXIS 14918	14

California Cases

<i>Aguilar v. Atlantic Richfield Co.</i> (2001) 25 Cal. 4th 826	12
<i>Aleksick v. 7-Eleven, Inc.</i> (2012) 205 Cal. App. 4th 1176	22
<i>Huff v. Securitas Security Services USA, Inc.</i> (2018) 23 Cal. App. 5th 745	23
<i>Lyle v. Warner Brothers Television Productions</i> (2006) 38 Cal. 4th 264	12
<i>Nealy v. City of Santa Monica</i> (2015) 234 Cal. App. 4th 359	12

1	<i>Robinson v. So. Counties Oil Co.</i> (2020)	
2	53 Cal. App. 5th 476	23
3	<i>Stoetzel v. Dep't of Hum. Res.</i> (2019)	
4	7 Cal. 5th 718	17
5	Federal Statutes	
6	Fair Credit Reporting Act	12
7	Labor Management Relations Act (LMRA)	<i>passim</i>
8	California Statutes	
9	Cal. Bus. and Prof. Code	
10	§ 17200	22
11	Cal. Code Civ. Proc.	
12	§ 437c(f)	12
13	Cal. Labor Code	
14	§§ 201, 202, and 203	21, 22
15	§ 204	7, 14, 15
16	§ 204(a)	14
17	§§ 204 and 210	15, 22
18	§ 204(c)	14, 16
19	§ 210	15
20	§ 223	17, 22
21	§ 226	21, 22
22	§ 226.7	20, 22
23	§§ 226.7 and 512	14, 19, 22
24	§ 227.3	21, 22
25	§ 510	13, 16
26	§§ 510 and 511	13
27	§§ 510 and 1198	17, 22
28	§ 512	7, 16
	§ 512(e)	13, 14
	§ 514	7, 13
	§ 514's	13
	§§ 1194, 1194.2, 1197 and 1197.1	17, 22
	§ 1197 (which was \$12/hr. in 2019)	17
	§ 1198	13
	§ 2699(a) & (g)(1)	23
	§ 2699(c)	23
	§ 2802	15, 22
	Private Attorneys General Act	12

Other Authorities

Indus. Wage Order 16	14
Indus. Wage Order 16(8)	16
Indus. Wage Order 16(8)(B)	15
Indus. Wage Order 16(10)	7, 13, 14, 16
Indus. Wage Order 16(11)	7, 14, 16

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Roy Wittbecker's ("Plaintiff's") employment with Defendant Cupertino Electric, Inc. ("Defendant") was governed by a collective bargaining agreement ("CBA") that exhaustively covered his hours, wages, and working conditions. Among other things, the CBA provided Plaintiff a base hourly rate of pay of \$45.36 and an overtime rate of pay of \$90.72;¹ provided Plaintiff a 30-minute meal period and two 15-minute rest breaks during his normal 8-hour workday; established the timing of his pay and final pay; and set parameters for business expenses. As such, Plaintiff's pending wage and hour claims rest upon the CBA and within the context of the Labor Management Relations Act ("LMRA"), not as state law claims before this Court.

Specifically, as discussed further in this motion, the undeniable fact that Plaintiff's employment with Defendant was governed by such an expansive CBA leads to the similarly inescapable conclusion that Plaintiff's claims are expressly exempt from the Labor Code and preempted by the LMRA:

- Overtime – Under Labor Code section 514, employees are exempt from California's overtime laws where, as here, the employee is covered by a CBA that provides the employee's hours of work, wages, and working conditions.
- Meal Periods – Under Labor Code section 512 and Industrial Wage Order 16(10), employees in the construction industry are exempt from California's meal period laws where, as here, the employee is covered by a CBA that provides (a) the employee's hours of work, wages, and working conditions; (b) an hourly and overtime rate of pay no less than 30% more than the state minimum wage; and (c) arbitration for disputes.
- Rest Breaks – Under Industrial Wage Order 16(11), employees in the construction industry are exempt from California's rest break laws if, as here, the employee is covered by a CBA that provides equivalent protection for rest breaks as the Wage Order.
- Pay Periods – Under Labor Code section 204, employees are exempt from California's pay period requirements where, as here, the employee is covered by a CBA that provides different

¹ This amounts to an hourly rate of pay of almost *four* times the State minimum wage (\$12/hr. in 2019) and an overtime rate of pay of more than *five* times the regular rate based on the State minimum wage (\$18/hr.).

1 pay timing requirements than the Labor Code.

- 2 • Overtime, Hourly Wages, Minimum Wage, Meal Periods, Rest Breaks, Business Expenses,
3 Wage Statements, Pay Periods, Vacation Wages and Final Pay – Plaintiff’s state law claims
4 for overtime, hourly wages, minimum wage, meal periods, rest breaks, business expenses,
5 wage statements, pay periods, vacation wages, and final pay are preempted by the LMRA
6 because the claims are based on rights created by the CBA or otherwise require interpretation
7 of the CBA to adjudicate those rights.

8 Finally, Plaintiff’s deposition testimony further confirmed that he simply does not have any viable
9 claim for vacation wages or unreimbursed business expenses. For example, despite the allegation in his
10 Complaint that he was not paid an hourly rate that was at least two times the State minimum wage and
11 incurred expenses related to tools, Plaintiff testified that he earned \$45.36 per hour (which, again, was
12 almost *four times* the State minimum wage) and did not incur any business expenses:

13 Q. When you first started working at Cupertino, your hourly rate was \$45.36?

14 A. Yes.

15 * * * * *

16 Q. During the time you were employed at Cupertino, did you ever have the need to go out
17 and purchase a tool with your own money?

18 A. No. Not that I recall.

19 (Decl. of Scott Jang in Support of Def.’s Mot. for Summ. J. or, in the Alternative, Summ. Adj. (“Jang
20 Decl.”) ¶ 2, Ex. A (“Pl.’s Depo”) 117:18-20; 180:19-22.)

21 For all these reasons, Plaintiff’s claims fail as a matter of law and summary judgment/adjudication
22 is warranted.

23 **II. BACKGROUND**

24 **A. Factual Background**

25 **1. The Parties**

26 Defendant is a leading electrical engineering and construction company that builds infrastructure
27 for commercial, energy, and data center customers. (Decl. of Pete Marsiguerra in Support of Def.’s Mot.
28 for Summ. Adj. (“Marsiguerra Decl.”) ¶ 4.) Defendant’s projects include constructing Levi’s Stadium’s

1 sports lighting power distribution and control system; building electrical systems at the Harvey Milk
2 Termination of the San Francisco International Airport; installing lighting and power at the Weill Institute
3 for Neurosciences at the University of California, San Francisco; and installing solar power infrastructure
4 at the Exploratorium in San Francisco. (*Id.*)

5 Plaintiff worked as a “Mobile Mechanic” for Defendant for a four-month period, from March 2019
6 to July 2019. (*Id.* ¶ 6b.) As a Mobile Mechanic, Plaintiff was part of a unique class of employees: mobile
7 Mechanics have the unique role of travelling to different construction project sites to inspect and repair
8 company vehicles when needed. (*Id.* ¶ 6d.) A Mobile Mechanic’s job duties are entirely different from
9 the electrical workers that form the majority of Defendant’s “field employee” workforce, all of whom
10 perform electrical engineering, wiring, and material handling at the construction sites. (*Id.*) For context,
11 of the thousands of putative class members that have been indiscriminately swept into this putative class
12 action, there are less than five Mobile Mechanics. (*Id.*) Plaintiff’s employment with Defendant ended
13 after only four months because it quickly became apparent that Plaintiff’s work product fell below
14 Defendant’s expectations and standards. (*Id.* ¶ 6e.)

15 **2. Plaintiff’s Employment was Governed by a Collective Bargaining Agreement**

16 Like the vast majority of Defendant’s employees, Plaintiff was employed as a union worker whose
17 employment was governed by a CBA. (*Id.* ¶ 7; Pl’s Depo. at 36:24-37:2, 38:22-39:4.) Specifically,
18 Plaintiff was a member of the International Brotherhood of Electrical Workers (“IBEW”), Local 1245,
19 and was dispatched to work for Defendant by the union on or around March 5, 2019. (Marsiguerra Decl.
20 ¶ 6a, Ex. 1; Pl.’s Depo. at 40:10-42:4.) As a member of IBEW Local 1245, Plaintiff’s employment with
21 Defendant was subject to and governed by the California Outside Line Construction Agreement Between
22 Western Line Constructors Chapter of NECA and Local Unions No. 47 and 1245 AFL-CIO International
23 Brotherhood of Electrical Workers, June 1, 2017-May 31, 2022 (“Outside Linemen CBA”). (Marsiguerra
24 Decl. ¶ 8, Ex. 4 (“CBA”).) The Outside Linemen CBA was entered into between (a) the Western Line
25 Constructors Chapter of NECA, of which Defendant is a signatory member; and (b) IBEW Locals 47 and
26 1245. (*Id.* ¶ 8, Ex. 5.)

27 As further detailed below, the Outside Linemen CBA provided the terms and working conditions
28 for Plaintiff’s employment with Defendant, including his (a) hours of work and wages, including overtime

1 pay; (b) pay periods and final pay; (c) meal and rest breaks; (d) business expenses; (e) vacation; and (f)
2 grievance and arbitration procedures:

3 **a. Hours of Work and Wages**

4 Pursuant to the Outside Linemen CBA, a normal workweek constituted 40 hours of work: eight
5 hours per day, Monday through Friday. (CBA at Section 4.1.) Plaintiff earned \$45.36 for each hour that
6 he worked within the normal workweek, consistent with the CBA's wage schedule for a Line Equipment
7 Man.² (CBA at Section 4.2, Ex. A; Marsiguerra Decl. Ex. 2.) Plaintiff also earned overtime at the rate
8 of double his base hourly rate (*i.e.*, \$90.72.) for all work performed outside the 40 hours in the regularly
9 scheduled workweek, for work performed on Saturdays and Sundays, and for nine preset holidays. (CBA
10 at Section 4.10; Marsiguerra Decl. Ex. 2.)

11 **b. Pay Periods and Final Pay**

12 Pursuant to the Outside Linemen CBA, Plaintiff received pay weekly. (CBA at Section 4.3.) The
13 CBA also provides an elaborate process for the timing of an employee's final pay, including penalties
14 that attach if the employee is not timely paid final wages:

15 In the event an employee doesn't receive his/her pay check at quitting time on pay day, he
16 shall receive eight (8) hours pay at the straight time rate for each twenty-four (24) hours or
portion thereof until he receives it.

17 Whenever practical, a worker who quits a job shall be paid by 4:30 p.m. by payroll check
18 before leaving the job, provided he gives his/her Foreman notice of his/her intention to
19 leave the job by 1:00 p.m., two (2) days before he leaves the job. However, in the event
20 the amount of money on the final check is greater than the amount due at the time of
21 termination, or in the event that the worker does not give advanced notice as described
22 above, the worker's final pay will be mailed within seventy-two (72) hours after he quits
23 (Saturdays, Sundays and Holidays excepted). In the event that he does not receive his/her
final check by the end of the seventy-two (72) hour period, he shall receive eight (8) hours
straight-time pay for each twenty-four (24) hour period or portion thereof until he receives
it. Postmark of mail to employee's last known address shall constitute compliance.
Exception: If available by the Employer an employee may opt for direct deposit of his/her
pay check and shall be subject to the regulations of the Employers direct deposit procedures
and therefore not subject to the penalty described above.

24 Liability for this penalty will commence upon notification by the Employee who has quit
25 to the Employer and the Union that he/she has not received their final paycheck as required
by this section.

26 (CBA at Section 4.3.)

27
28 ² Although Plaintiff's dispatch form from IBEW Local 1245 indicated that Plaintiff would be classified as a Groundman, he
was paid as a Line Equipment Man since his unique role as a "Mobile Mechanic" did not squarely fit within the Groundman
classification.

1 **c. Meal and Rest Breaks**

2 Pursuant to the Outside Linemen CBA, Plaintiff received a 30-minute meal period between the
3 fourth and fifth hour of work, as well as two 15-minute rest breaks, during each eight-hour day. (CBA
4 at Section 4.1.) Moreover, if Plaintiff worked more than two and one-half hours after his regularly
5 scheduled quitting time, he was entitled to a second meal period. (CBA at Section 4.7.) If Plaintiff for
6 some reason did not receive a meal period to which he was entitled, he received a premium of \$15.00
7 plus 30 minutes of pay. (*Id.*)

8 **d. Business Expenses**

9 Pursuant to the Outside Linemen CBA, Plaintiff received a \$50 per diem to cover mileage and
10 subsistence while traveling. (CBA at Section 5.2.) Although Plaintiff was expected to furnish his own
11 basic tools (*see* CBA at Section 6.5), Defendant provided overalls, gloves, and laundry service for jobs
12 requiring exceptionally dirty work. (CBA at Section 6.15.)

13 **e. Vacation**

14 For union employees like Plaintiff, accrued vacation (if any) is solely dictated by the terms of the
15 governing CBA. (Marsiguerra Decl. ¶ 10.) In general, CBAs do not provide union employees accrued
16 vacation. (*Id.*) The Outside Linemen CBA does not provide union employees accrued vacation, and as
17 such Plaintiff was not entitled to accrue any vacation. (*Id.*)

18 **f. Grievance and Arbitration Procedures**

19 The Outside Linemen CBA provided a grievance and arbitration procedure to resolve disputes
20 regarding work hours, pay, meal and rest breaks, business expenses, or any other working conditions set
21 forth in the CBA. First, the employee files a grievance. (CBA at Ex. E.) The grievance is then presented
22 orally by the employee and either a Shop Steward or Union Business Representative to the employee's
23 direct supervisor. (*Id.*) If the grievance is not resolved within 72 hours, the grievance and requested
24 remedy is presented in writing to Defendant, which then has ten calendar days to respond. (*Id.*) If the
25 grievance is not resolved by Defendant, the grievance is presented to the Labor-Management Committee.
26 (*Id.*) Finally, if the Labor-Management Committee does not resolve the grievance, the grievance is then
27 submitted to the Council on Industrial Relations of the Electrical Contracting Industry for final, binding
28 adjudication. (CBA at Sections 1.8 and 1.9.)

1 **B. Procedural History**

2 Plaintiff initiated two actions against Defendant. First, on July 27, 2020, Plaintiff filed a putative
3 class action against Defendant asserting claims for alleged (1) violation of the Fair Credit Reporting Act;
4 (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to pay hourly wages,
5 including overtime; (5) failure to pay vacation wages; (6) failure to furnish accurate wage statements; (7)
6 failure to timely pay final wages; and (8) unfair competition (“the Putative Class Action”). (Jang Decl.
7 ¶ 3, Ex. B.) Second, on October 23, 2020, Plaintiff filed a Labor Code Private Attorneys General Act
8 action against Defendant seeking penalties for the same alleged Labor Code violations asserted in the
9 Putative Class Action, namely alleged (1) failure to provide meal periods; (2) failure to provide rest
10 breaks; (3) failure to pay all hourly wages, including overtime; (4) failure to pay vacation wages; (5)
11 failure to furnish accurate wage statements; and (6) failure to timely pay wages during employment and
12 upon separation (“the PAGA Action”). (*Id.* ¶ 4, Ex. C.) The two actions have since been consolidated,
13 and the cause of action under the Fair Credit Reporting Act has been dismissed with prejudice. (*Id.* ¶ 5.)

14 **II. LEGAL STANDARD**

15 A court shall grant a motion for summary judgment or summary adjudication “if the papers show
16 there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter
17 of law.” (*Nealy v. City of Santa Monica* (2015) 234 Cal. App. 4th 359, 370) (citing Cal. Code Civ. Proc.
18 § 437c(c)). In moving for summary judgment or summary adjudication, the defendant carries the initial
19 burden of showing that one or more elements of the cause of action cannot be established, or that there
20 is a complete defense to the cause of action. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826,
21 849) (citations omitted). Once the defendant satisfies its burden, “the burden shifts to the plaintiff . . .
22 to show that a triable issue of one or more material facts exists as to that cause of action or a defense
23 thereto.” (*Id.*) The plaintiff “may not rely upon the mere allegations or denials of his pleadings” to
24 show that a triable issue exists. (*Id.*) If the plaintiff does not produce sufficient evidence in this regard,
25 summary judgment or summary adjudication is properly granted. (*Lyle v. Warner Brothers Television*
26 *Productions* (2006) 38 Cal. 4th 264, 274; *see* Cal. Code Civ. Proc. § 437c(f)).

27 **III. LEGAL ARGUMENT**

28 The fact that Plaintiff’s employment with Defendant was governed by the Outside Linemen CBA

1 is fatal to Plaintiff's claims in three respects. First, Plaintiff is explicitly exempt from the Labor Code's
2 and Wage Order's provisions regarding overtime, meal periods, rest breaks, timing of pay, and business
3 expenses. Second, all of Plaintiff's claims are preempted by the LMRA. Third, Plaintiff's deposition
4 testimony confirms that he lacks any viable claim for unpaid vacation wages or unreimbursed business
5 expenses.

6 **A. Labor Code and Wage Order Exemptions**

7 **1. Overtime**

8 Labor Code section 514 expressly states that the overtime provisions of Labor Code sections 510
9 and 511 do not apply to an employee covered by a CBA that "provides for the wages, hours of work, and
10 working conditions of the employees," and if the CBA "provides premium wage rates for all overtime
11 hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than
12 the state minimum wage."

13 The Outside Linemen CBA satisfies all of these requirements. First, the CBA provided that a
14 normal workweek constituted 40 hours of work: eight hours per day, Monday through Friday. (CBA at
15 Section 4.1.) Second, the CBA provided a wage schedule, under which Plaintiff earned \$45.36 for each
16 regular hour worked (nearly four times the State minimum wage in 2019) and \$90.72 for all hours worked
17 outside the 40-hour regular workweek (more than five times the regular rate at the State minimum wage
18 in 2019). (CBA at Section 4.10.) Third, the CBA covered a vast array of other working conditions for
19 Plaintiff, including timing of pay (CBA at Section 4.3); expenses (CBA at Sections 5.2 and 6.15); shift
20 work (CBA at Section 4.1); show-up pay (CBA at Section 4.4); pay for travel time (CBA at Section 4.9);
21 job transfers (CBA at Section 5.4); and safety (CBA at Article VI, Ex. B.). Accordingly, because the
22 Outside Linemen CBA satisfies Labor Code section 514's requirements, Plaintiff's claims for overtime
23 under Labor Code section 510 (and Labor Code section 1198 by extension) fail as a matter of law.

24 **B. Meal Periods**

25 Labor Code section 512(e) and Industrial Wage Order 16(10) provide that employees in the
26 construction industry are exempt from California's meal period requirements if (a) the employee's hours
27 of work, wages, and working conditions; (b) an hourly and overtime rate of pay no less than 30% more
28 than the state minimum wage; and (c) arbitration for disputes.

1 The Outside Linemen CBA also satisfies all of these requirements. First, as explained above, the
2 CBA provided Plaintiff's hours of work, wages, and working conditions. (See Section IV.A.1.) Second,
3 as also already explained above, the CBA provided a wage schedule, under which Plaintiff earned \$45.36
4 for each regular hour worked (nearly four times the State minimum wage in 2019) and \$90.72 for all
5 hours worked outside the 40-hour regular workweek (more than five times the regular rate at the State
6 minimum wage in 2019). (CBA at Section 4.10.) Third, the CBA provided a grievance and arbitration
7 procedure for resolving disputes, including disputes related to meal periods. (CBA at Ex. E, Sections 1.8
8 and 1.9.) Accordingly, because the Outside Linemen CBA satisfies Labor Code section 512(e) and Wage
9 Order 16(10)'s requirements, Plaintiff's claims for meal periods under Labor Code sections 226.7 and
10 512 fail as a matter of law.

11 **C. Rest Breaks**

12 Industrial Wage Order 16(11) provides that employees in the construction industry are exempt
13 from California's rest break requirements if the employee is covered by a CBA that provides equivalent
14 protection for rest breaks as the Wage Order. Such is the case here. The Outside Linemen CBA provided
15 Plaintiff two 15-minute rest breaks during an 8-hour shift, which is *more* than the 10-minute rest breaks
16 Plaintiff would have been entitled under state law. The exemption in Wage Order 16(11) is therefore
17 satisfied, and Plaintiff is exempt from the Labor Code's rest break requirements. (See, e.g., *Zayerz v.*
18 *Kiewit Infrastructure West* (C.D. Cal. Jan. 18, 2018) 2018 U.S. Dist. LEXIS 14918, at *10-11) (holding
19 that the plaintiff was exempt from the Labor Code's rest breaks requirements pursuant to Wage Order 16
20 where, as here, he was provided 15-minute, as opposed to 10-minute, rest breaks).

21 **D. Timing of Pay**

22 Labor Code section 204 establishes pay timing requirements for wages earned by an employee
23 during employment. Under section 204, work performed between the 1st and 15th of the month generally
24 must be paid between the 16th and 26th day of the month, and work performed between the 16th and last
25 day of the month must be paid between the 1st and 10th day of the following month. Lab. Code § 204(a).
26 Section 204, however, includes an explicit carve out for CBAs: section 204(c) explicitly states that the
27 timing requirements of section 204 do not apply when a CBA covers an employee and provides different

28 pay arrangements. Such is the case here. The Outside Linemen CBA provides for weekly pay periods

(CBA at Section 4.3), which differs from section 204's general pay schedule. Accordingly, section 204 does not apply to Plaintiff, and his claims for alleged violation of Labor Code sections 204 and 210 fail as a matter of law.³

E. Business Expenses

The Industrial Wage Orders provide that employers are not required to reimburse employees for tools or other equipment customarily required by a particular trade or craft if the employee earns at least two times the state minimum wage. (*See* Indus. Wage Order 16(8)(B).) Accordingly, Plaintiff's claim for failure to reimburse him for tools under Labor Code section 2802 fails as a matter of law. Plaintiff earned \$45.36 for each regular hour worked (nearly four times the State minimum wage in 2019), and the tools that Plaintiff used in connection with his job were those customarily required in the mechanic trade/craft. (*See* Pl.'s Depo. at 104:7-106:24) (where Plaintiff explains that the personal tools he used were "hand tools" that "[he] was normally used to using," including "hand wrenches, sockets, ratchets, screwdrivers, electrical tools, electrical testers, test lights, [and] air tools.")

F. LMRA Preemption

Section 301 of the LRMA is a "mandate . . . to fashion a body of federal common law to be used to address disputes arising out of labor contracts" requiring federal courts to exercise jurisdiction over federal labor law claims. (*Allis-Chalmers Corp. v. Lueck* (1985) 471 U.S. 202, 209.) Therefore, where a CBA governs a plaintiff's claim against an employer, section 301 of the LRMA preempts the claim and converts it to a federal question over which the federal court has jurisdiction. (*Burnside v. Kiewit Pac. Corp.* (9th Cir. 2007) 491 F.3d 1053, 1059.) In effect, section 301 "displace[s] entirely any state cause of action for violation of contracts between an employer and a labor organization." (*Franchise Tax Board v. Constr. Laborers Vacation Trust* (1983) 463 U.S. 1, 23). The preemptive force of section 301 is so great that even where the plaintiff has not alleged a breach of the labor contract by an employer, a claim will still be preempted where the right asserted "exists solely as a result of the [CBA]," or is "substantially dependent on analysis of a [CBA]." (*Burnside*, 491 F.3d at 1059.)

Courts apply a two-part test to determine whether a claim is preempted by section 301 of the LMRA. (*Curtis v. Irwin Industries* (9th Cir. 2019) 913 F.3d 1146, 1152.) First, courts ask whether the

³ Labor Code section 210 is the penalty provision associated with a violation of Labor Code section 204.

1 state cause of action involves a right that exists “solely as a result of the CBA.” (*Id.*) If the answer is
2 yes, the claim is preempted. (*Id.* at 1153.) If, however, the answer to the first question is no, the second
3 part of the test asks whether a state law right is “substantially dependent on analysis of the CBA, which
4 turns on whether the claim cannot be resolved by simply “looking to versus interpreting the CBA.” (*Id.*)
5 (citations and internal quotation marks omitted). In other words, “a state law claim may avoid preemption
6 if it does not raise questions about the scope, meaning, or application of the CBA.” (*Id.*)

7 **1. Step 1 – Preemption of Overtime, CBA Hourly Wages, Meal Period, Rest**
8 **Break, Business Expenses, and Timing of Pay Claims**

9 When a state statute provides that employers are exempt from the statute due to a CBA affording
10 employees other rights, a plaintiff’s claim under the state statute is deemed to exist “solely as a result of
11 the CBA” and is preempted at the first step of the preemption analysis. (*Curtis*, 913 F.3d at 1155.) For
12 example, in *Curtis*, a plaintiff covered by a CBA brought an overtime claim under Labor Code section
13 510. (*Id.* at 1150.) Section 510, however, includes an explicit carveout for employees covered by a CBA,
14 as explained above in this motion. (*Id.* at 1153.) Because the CBA in *Curtis* met the conditions for the
15 CBA exception to section 510, Plaintiff’s claim was deemed preempted by the LMRA. (*Id.* at 1155.) As
16 the Ninth Circuit explained:

17 Curtis’s CBAs in this case meet the requirements of section 514, and therefore Curtis’s
18 claim for overtime pay is controlled by his CBAs. Because Curtis’s right to overtime exists
19 solely as a result of the CBA, his claim that Irwin violated overtime requirements by not
20 paying him for the 12 off-duty hours is preempted under § 301. Thus, his claim fails at
21 step one of the preemption analysis.

21 (*Id.*) (internal citation and quotation marks omitted).

22 Here, as explained above in Section IV.A, Plaintiff’s overtime claims are exempt from the Labor
23 Code under Labor Code section 510, Plaintiff’s meal period claims are exempt from the Labor Code
24 under Labor Code section 512 and Wage Order 16(10), Plaintiff’s rest break claims are exempt from the
25 Labor Code under Wage Order 16(11), Plaintiff’s business expense reimbursement claims are exempt
26 from the Labor Code under Wage Order 16(8), and Plaintiff’s timing of pay claims are exempt from the
27 Labor Code under Labor Code section 204(c). Therefore, like the overtime claims deemed preempted
28 by the LMRA in *Curtis*, Plaintiff’s claims for overtime, meal periods, rest breaks, business expense

1 reimbursement, and timing of pay are similarly preempted by the LMRA at step one of the analysis.

2 Along similar lines, to the extent Plaintiff asserts a claim to recover his CBA-provided wages for
3 any non-overtime hours worked (*i.e.*, a claim to recover his unpaid \$45.36 CBA hourly wage for alleged
4 uncompensated time, as opposed to a claim for unpaid overtime or minimum wage under state law), the
5 claim for CBA hourly wages is likewise solely a creature of the Outside Linemen CBA and therefore
6 preempted by the LMRA at step one. While state law may require payment of *minimum wage* for hours
7 worked under Labor Code section 1197 (which was \$12/hr. in 2019), no state law required Defendant to
8 pay Plaintiff the CBA-provided hourly rate of \$45.36.⁴ Therefore, any purported claim to entitlement to
9 wages at the CBA-provided hourly rate of \$45.36 is solely a function of the CBA and preempted by the
10 LMRA at the step one of the analysis.

11 In sum, Plaintiff's claims for overtime, hourly wages, meal periods, rest breaks, and timing of pay
12 during employment are preempted by the LMRA at step one.

13 **2. Step 2 – Preemption of Overtime, CBA Hourly Wages, Minimum Wage, Meal**
14 **Periods, Rest Breaks, Vacation Pay, Wage Statements, and Final Pay Claims**

15 Even if a claim does not “exist[] solely as a result of the [CBA],” the LMRA preempts state law
16 claims at step two if the claim is “substantially dependent on analysis of a [CBA]” – *i.e.*, the right requires
17 interpretation of the scope, meaning, or application of the CBA. (*Curtis*, 913 F.3d at 1153; *Burnside*,
18 491 F.3d at 1059.) As explained below, Plaintiff's claims for overtime, CBA hourly wages, minimum
19 wage, meal periods, rest breaks, wage statements, and final pay all require interpretation of the Outside
20 Linemen CBA and are thus preempted.

21 **a. Unpaid Wages**

22 Plaintiff's claims for unpaid wages – whether they sound in overtime (Labor Code sections 510
23 and 1198), CBA-provided hourly wages, or minimum wage (Labor Code sections 1194, 1194.2, 1197
24 and 1197.1) – are preempted at step two of the preemption analysis. The Outside Linemen CBA details
25 Plaintiff's hours of work, hourly rates, and shifts. (CBA at Section 4.1 and 4.2.) The CBA also provided
26

27 ⁴ Plaintiff may argue that such falls within the scope of Labor Code section 223. Not so. Labor Code section 223 relates to
28 secret kickback payments, not general claims for unpaid work. (*See Stoetzel v. Dep't of Hum. Res.* (2019) 7 Cal. 5th 718, 752)
(distinguishing claims for unpaid work from claims under section 223). There are no factual allegations, let alone evidence, of
a scheme for secret kickback payments in this case.

1 detailed provisions regarding show-up pay (CBA at Section 4.4), job cancellation (CBA at Section 4.5),
2 call out pay (CBA at Section 4.6), and travel pay (CBA at Section 4.9):

3 **SHOW-UP PAY**

4 4.4 (a) Any employee reporting for work on a scheduled work day, and does not
5 start work for any reason beyond his/her control, and not having been notified prior to two
6 (2) hours before starting time, shall be paid for two (2) hours at the applicable rate of pay
7 (plus the applicable subsistence expense as set forth in Article V). Employees may be
8 required to perform duties, including safety meetings, at headquarters during these two (2)
9 hours. However, if an employee chooses to suspend work after having started work, due
10 to inclement weather, the employee shall be paid for time worked only.

11 **CANCELLATION OF JOB**

12 4.5 Any applicant reporting for employment on a job to which he or she has been given
13 bona fide referral by the dispatcher and is not given employment for at least eight (8) hours
14 due to cancellation of the job, shall be paid for the day on which he or she reports, a
15 minimum of eight (8) hours at the applicable rate of pay plus the applicable subsistence
16 expense as set forth in Article V of the Agreement.

17 **MINIMUM CALL OUT**

18 4.6 When an employee is called out for unscheduled overtime work from his/her home,
19 he or she shall be paid for four (4) hours at the applicable rate of pay. If the four (4) hours
20 overlap into his or her regularly scheduled work shift, the straight time rate of pay for that
21 shift shall begin at the end of the four-hour period and end at the regular quitting time.

22 **TRAVEL TO JOB**

23 4.9 The Employer shall pay for traveling time and furnish transportation for all
24 employees from the place where they report for work each day and return to the same place
25 at the end of each work day on all work within the jurisdiction of the Union.

26 Plaintiff's contention that he was not paid for all wages owed as a traveling Mobile Mechanic will require
27 interpretation of, at least, the terms "reporting for work" and "inclement weather" (pertaining to show-
28 up pay); "bona fide referral" (pertaining to job cancellation); "called out" (pertaining to minimum call
out pay); and "traveling time" and "jurisdiction of the Union" (pertaining to travel pay), giving rise to
LMRA preemption.

The court reached the same conclusion in *Rodriguez v. Gonsalves & Santucci, Inc.* (N.D. Cal.
Jan. 18, 2022) 2022 U.S. Dist. LEXIS 8645. In *Rodriguez*, the court held that the plaintiff's claims for
unpaid wages – whether overtime, straight time, or minimum wage – were preempted by the LMRA. (*Id.*

1 at *12.) The court reasoned that the CBA detailed the “hours of work, hourly rates, workdays, and shift
2 work” of the plaintiff and addressed compensation for activities such as “show-up expenses” and “actual
3 hours worked.” (*Id.* at *13.) The court therefore concluded that resolution of the plaintiff’s unpaid wage
4 claims turned upon an analysis and interpretation of the CBA:

5 [T]he claims for unpaid wages, whether overtime, straight time, or minimum wage (claims
6 one, two, and five) substantially depend on an analysis of the CBA. The agreement details
7 the hours of work, hourly rates, workdays, and shift work. The plaintiff claims that the
8 defendant failed to pay minimum wages for off-the-clock activity, such as making phone
9 calls or driving. The CBA addresses compensation for activities such as show-up expenses
or actual hours worked. At minimum, resolution of the claims requires interpretation of
CBA terms such as “actual hours worked” and “show up expenses.” Thus, the unpaid
wages claim turns on the analysis of the CBA and interpretation of its terms.

10 (*Id.*) (internal quotation marks and citations omitted).

11 **b. Meal Periods**

12 Plaintiff’s claim for meal periods (Labor Code sections 226.7 and 512) is also preempted at step
13 two of the preemption analysis. The Outside Linesmen CBA establishes an intricate scheme for meal
14 periods. Not only does the CBA state that meal periods of 30 minutes shall be “allowed” on the different
15 shifts (*see* CBA at Section 4.1 “Shifts”), the CBA also (1) provides the start time for meal periods when
16 the normal work hours are changed pursuant to a special procedure in the CBA (*see* CBA at Section 4.1
17 “Change of Work Hours”); (2) provides a penalty of \$15 and one-half hour of pay for each meal period
18 not provided (*see* CBA at Section 4.7); and (3) provides *paid* meal periods at intervals of four and one
19 half hours for employees required to work more than two and one half hours past their regularly scheduled
20 “quitting time” (*see* CBA at Section 4.7). Thus, at a minimum, the term “allowed,” the import of the
21 change schedule provisions, and the term “quitting time” will need to be interpreted in order to adjudicate
22 Plaintiff’s meal period claim.

23 The circumstances present here are no different than those in *Marquez v. Toll Global Forwarding*
24 *USA Inc.* (C.D. Cal. June 28, 2018) 2018 U.S. Dist. LEXIS 109463 (“*Marquez I*”). There, the district
25 court held – and the Ninth Circuit affirmed (*see Marquez v. Toll Global Forwarding USA Inc.* (9th Cir.
26 2020) 804 Fed. Appx. 679) (“*Marquez II*”) – that the plaintiff’s meal period claim was preempted at step
27 two of the LMRA preemption analysis. In *Marquez I* – and as affirmed in *Marquez II* – the district court
28

1 concluded that while the CBA stated that employees were “permitted” to take meal and rest breaks, it
2 was unclear what the term “permitted” meant, especially since other terms – namely, “load,” “leave a
3 load,” and “unattended” – were also unclear and might impact the plaintiff’s entitlement to meal periods.
4 And, because interpretation of these terms would be required to adjudicate the plaintiff’s meal period
5 claim, the claim was preempted by the LMRA:

6 Plaintiff is correct that the meal and rest break claims do not fail under the first prong of
7 the [LMRA preemption] test because the rights to meal and rest breaks are provided under
8 California law, not the CBA. However, these claims fail under the second [preemption]
9 prong, because they require interpretation of the CBA. The meal and rest break provision
10 of the CBA “permits” employees to take “any and all meal and rest periods that the
11 Employee is entitled to by law.” As Defendants point out, the CBA does not obligate the
12 employer to provide breaks, and it is not entirely clear what it means to “permit” an
13 employee to take a break. Furthermore, Plaintiff alleges Defendants scheduled employees
14 in a way that failed to reasonably ensure they could take meal breaks, and failed to
15 implement a relief system so that they could take rest breaks. Therefore, adjudication of
16 these claims will require analysis of Defendants’ scheduling policies, combined with
17 analysis of what it means under the CBA to “permit” an employee to take a break. Namely
18 the question will hinge on how exactly defendants’ policies prevented employees from
19 taking the breaks they were permitted. Additionally, the same provision of the CBA
20 provides: “Employees may not leave a load unattended to take a meal or rest break.”
21 Defendants argue that deciding Plaintiff’s claims will require interpretation of what a
22 “load” is, what it means to “leave a load,” and what “unattended” means. In both instances,
23 addressing the issue will require more than merely applying the terms of the CBA. It will
24 require interpretation, and the parties will likely dispute the meaning of these terms.

25 (*Marquez I*, 2018 U.S. Dist. LEXIS 109463 at *9-10).

26 **c. Rest Breaks**

27 Plaintiff’s claim for rest breaks (Labor Code section 226.7) is also preempted at step two of the
28 preemption analysis because, as with Plaintiff’s meal period claim, the term “allowed” will need to be
interpreted in the context of rest breaks and an employee’s work. Section 4.1 of the Outside Linemen
CBA states that “two (2) fifteen (15) minute breaks will be allowed per day.” What is meant by “allowed”
in the context of Plaintiff’s work as a traveling Mobile Mechanic will be hotly disputed by the parties.
This, therefore, is no different than *Marquez II*, where the Ninth Circuit held that the term “permit,” in
similar circumstances regarding a CBA permitting meal and rest breaks, would require interpretation of
the CBA and thus gives rise to LMRA preemption. (*See Marquez II*, 804 Fed. Appx. at 681.)

///

1 **d. Vacation Pay**

2 Plaintiff's claim for accrued but unused vacation pay due upon termination (Labor Code section
3 227.3) is also preempted at step two of the preemption analysis. Not only does section 227.3 explicitly
4 look to the existence of a CBA, but as Mr. Marsiguerra's declaration makes clear, Defendant's union
5 employees' entitlement to vacation (if any) is dictated and governed solely by the employees' applicable
6 CBA. Even Plaintiff confirmed this point in his deposition when he testified that his purported belief
7 that he was entitled to vacation was due to his belief there was an agreement between Defendant and his
8 union. (*See* Pl.'s Depo. at 51:21-52:3) ("Based on – yes. And my understanding [of my alleged
9 entitlement to vacation], it was because – *through the union that that agreement was put into – into*
10 *force.*") (emphasis added). Plaintiff's claim for unpaid vacation pay due upon termination therefore
11 requires interpretation of the CBA and gives rise to LMRA preemption.

12 **e. Derivative Claims – Wage Statements and Final Pay**

13 Plaintiff's claims for accurate wage statements (Labor Code section 226) and untimely payment
14 of final wages (Labor Code sections 201, 202, and 203) are derivative of his claims for unpaid wages,
15 meal period, and rest breaks. Plaintiff contends that because he was not paid all of his wages, not provided
16 meal periods, and not permitted to take rest breaks, it follows that his wage statements were inaccurate
17 and he was not paid all wages due upon the termination of his employment. Because Plaintiff's claims
18 for accurate wage statements and final pay are derivative in nature, they too are preempted and fail since
19 the underlying claims upon which they are premised are preempted and fail. (*See, e.g., Giles v. Canus*
20 *Corp.* (N.D. Cal. Aug. 16, 2022) 2022 U.S. Dist. LEXIS 146789, at *14-15) ("Giles's minimum wage,
21 overtime, and meal period claims are preempted by the LMRA; consequently, to the extent his wage
22 statement, waiting time, wrongful termination, and [unfair competition] claims are derivative thereof,
23 those claims likewise are preempted by the LMRA.").

24 **G. Residual Claims: Unfair Competition and Non-Individual PAGA Claims**

25 The following chart summarizes the exemption and preemption analysis discussed above:

26

27

28

	Labor Code / Wage Order Exemption	LMRA Preemption
1. Meal Periods – Second Cause of	Exempt	Preempted (steps one and two)

1	Action; ⁵ Labor Code §§ 226.7 and 512		
2	2. Rest Breaks – Third Cause of Action; Labor Code § 226.7	Exempt	Preempted (steps one and two)
3			
4	3. Overtime – Fourth Cause of Action; Labor Code §§ 510, 1198	Exempt	Preempted (steps one and two)
5			
6	4. Hourly Wages – Fourth Cause of Action; Labor Code § 223		Preempted (steps one and two)
7			
8	5. Minimum Wage – Fourth Cause of Action; Labor Code §§ 1194, 1194.2, 1197 and 1197.1		Preempted (step two)
9			
10	6. Vacation Pay – Fifth Cause of Action; Labor Code § 227.3		Preempted (step two)
11			
12	7. Business Expenses – Sixth Cause of Action; Labor Code § 2802	Exempt	Preempted (step one)
13			
14	8. Wage Statements – Seventh Cause of Action; Labor Code § 226)		Preempted (step two)
15			
16	9. Timely Pay During Employment – Eighth Cause of Action; Labor Code §§ 204 and 210)	Exempt	Preempted (step one)
17			
18	10. Timely Pay Upon Separation – Eighth Cause of Action; Labor Code §§ 201, 202 and 203)		Preempted (step two)
19			

Disposition of the claims above leaves Plaintiff's unfair competition claim and the non-individual PAGA claims, neither of which Plaintiff can continue prosecuting. First, the unfair competition claim is derivative of Plaintiff's underlying Labor Code claims. Therefore, just as the underlying Labor Code claims fail, so too does Plaintiff's unfair competition claim. (*See Aleksick v. 7-Eleven, Inc.* (2012) 205 Cal. App. 4th 1176, 1185) ("When a statutory claim fails, a derivative [unfair competition] claim [under Business and Professions Code section 17200] also fails.").

Second, to proceed with a PAGA action, the named plaintiff must be an "aggrieved employee"

⁵ Causes of action refer to the causes of action asserted in the Putative Class Action. Citation to Labor Code sections refer to the Labor Code sections cited in both the Putative Class Action and PAGA Action.

1 within the meaning of PAGA. (Cal. Labor Code § 2699(a) & (g)(1).) To be an “aggrieved employee”
2 within the meaning of PAGA, a plaintiff must prove that they personally suffered one or more of the
3 Labor Code violations alleged in the Complaint. (Cal. Labor Code § 2699(c); *Huff v. Securitas Security*
4 *Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 754) (stating: “Labor Code penalties recoverable by state
5 authorities may be recovered in a PAGA action by a person who was employed by the alleged violator
6 and affected by at least one of the violations alleged in the complaint.”) (emphasis added). If the plaintiff
7 cannot prove they are an “aggrieved employee,” the plaintiff lacks standing, and the PAGA action must
8 be dismissed. (*See, e.g., Robinson v. So. Counties Oil Co.* (2020) 53 Cal. App. 5th 476, 483-84 (affirming
9 dismissal of PAGA claims where the plaintiff was not an “aggrieved employee”).)

10 Here, as explained above, Plaintiff’s PAGA claims are all exempt from the Labor Code and/or
11 preempted by the LMRA. As such, he cannot show that he personally suffered a Labor Code violation
12 and cannot move forward with his PAGA action. Accordingly, summary adjudication should be granted
13 on Plaintiff’s individual PAGA claims and any non-individual PAGA claims of other alleged aggrieved
14 employee should be dismissed without prejudice.

15 **H. Plaintiff’s Deposition Testimony Further Confirms that He Lacks a Viable Claim**
16 **for Unpaid Vacation Wages or Unreimbursed Business Expenses**

17 Lastly, apart from the Labor Code exemptions and LMRA preemption discussed above, Plaintiff’s
18 deposition testimony confirms that he cannot raise a triable issue of fact with respect to his claim that
19 he is owed unpaid vacation wages or reimbursement for business expenses. With respect to unpaid
20 vacation wages, Plaintiff confirmed in his deposition that he simply speculates that he is entitled to
21 vacation based upon hearsay from others. Plaintiff could not identify any concrete documentary basis
22 for his claim to vacation, let alone provide any details regarding how or in what amounts he purportedly
23 accrued vacation.⁶

24 Q. Okay. And earlier you said you understood from the guide or handbook you believe
25 you received from Cupertino you were entitled to vacation. What vacation do you
26

27 ⁶ These details are critical for Plaintiff to state a viable claim. For example, what if this purported vacation policy only applied
28 after Plaintiff completed a probation period – a feature that is common to many employer vacation policies? Plaintiff would
not even be able to show that his brief four-month employment would even qualify him for vacation under his own hypothetical
vacation policy.

1 understand you were entitled to?

2 A. According what I believe – what I was led to believe was that I accrued a certain amount
3 of vacation time and sick leave – or sick time based on my hours that I worked.

4 Q. Okay. And who was – was there a person who led you to that conclusion.

5 A. Well, John was one that told me that.

6 Q. Okay.

7 A. And then Ryan was one that had explained it also.

8 Q. Okay. And – okay. And what do you recall – and what was John – and you said John
9 was another mechanic. Is that right?

10 A. Yes.

11 Q. Okay. Was he a supervisor?

12 A. No.

13 Q. Okay. And what do you – what did John tell you specifically about vacation and sick pay
14 – or sick leave?

15 A. Just what I just told you.

16 Q. Okay. And what did Ryan tell you about vacation and sick leave?

17 A. Basically the same thing.

18 Q. Okay. Did Ryan tell you how much vacation you could accrue?

19 A. I – I believe he did. But I don't recall –

20 Q. Okay.

21 A. -- what – what the amount would be.

22 Q. And is there any document or source you can go to refresh your recollection?

23 A. Not that I – not that I have.

24 * * * * *

25 Q. All right. So you have a general – is it accurate to say you have a general recollection of
26 John and Ryan telling you that if you work for Cupertino, you were eligible to accrue
27 vacation time and sick leave based on how many hours you worked?

28 A. Based on – yes. And my understanding, it was because – through the union that that

1 agreement was put into – into force.

2 (Pl.'s Depo. at 50:2-52:3.) In light of Defendant's specific evidence that vacation for union employees
3 is governed solely by the employees' CBAs and Plaintiff was not entitled to vacation under the Outside
4 Linemen CBA, Plaintiff's mere speculation that he is owed vacation – speculation that is predicated
5 entirely upon hearsay from others – does not create a triable issue of fact.

6 As for reimbursement of business expenses, Plaintiff's deposition testimony could not be any
7 clearer that he did not incur any unreimbursed business expenses:

8 Q. Okay. Do you believe Cupertino owes you money for any expenses that you weren't
9 reimbursed for or covered by your per diem?

10 A. Not –

11 [Objections]⁷

12 A. Not that I recall.

13 * * * * *

14 Q. During the time you were employed at Cupertino, did you ever have the need to go out
15 and purchase a tool with your own money?

16 A. No. Not that I recall.

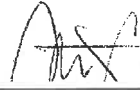
17 (Pl.'s Depo. at 49:17-25, 180:19-22.) As such, Plaintiff cannot raise a triable issue of fact regarding his.
18 claim for unreimbursed business expenses.

19 **IV. CONCLUSION**

20 For all the above reasons, Defendant respectfully requests the Court grant Defendant's motion for
21 summary judgment or, in the alternative, summary adjudication.

22 DATED: May 17, 2024

JACKSON LEWIS P.C.

23 By: 

24 Mia Farber
25 Scott P. Jang
26 Isabella L. Shin
27 Attorneys for Defendant
CUPERTINO ELECTRIC, INC.

28 4868-1270-9567, v. 2

⁷ Plaintiff's counsel objected as follows: "Same objection of vague and ambiguous. Overbroad. Calls for a narrative. Calls for a legal conclusion." (Pl.'s Depo. at 49:21-23.) The scattershot objections lack merit.

EXHIBIT 2

Mia Farber (State Bar No. 131467)
 JACKSON LEWIS P.C.
 725 South Figueroa Street, Suite 2500
 Los Angeles, CA 90017
 Telephone: (213) 689-0404
 Facsimile: (213) 689-0430
 Email: Mia.Farber@jacksonlewis.com

Scott P. Jang (State Bar No. 260191)
 JACKSON LEWIS P.C.
 50 California Street, 9th Floor
 San Francisco, California 94111
 Telephone: (415) 394-9400
 Facsimile: (415) 394.9401
 Email: Scott.Jang@jacksonlewis.com

Isabella L. Shin (State Bar No. 294937)
 JACKSON LEWIS P.C.
 160 W. Santa Clara Street, Suite 400
 San Jose, California 95113
 Telephone: (408) 579-0404
 Facsimile: (408) 454-0290
 Email: Isabella.Shin@jacksonlewis.com

Attorneys for Defendant
 CUPERTINO ELECTRIC, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

ROY WITTBECKER, on behalf of himself,
 and all others similarly situated, and the
 general public

Plaintiff,

vs.

CUPERTINO ELECTRIC, INC., a Delaware
 corporation; and DOES 1 through 50,
 inclusive,

Defendants.

Case No. 20CV368613 (CLASS)
 Case No. 20CV371987 (PAGA)

**STIPULATION OF CLASS AND
 REPRESENTATIVE ACTION
 SETTLEMENT**

Class Action Complaint Filed: 07/27/2020
 PAGA Complaint Filed: 10/23/2020
 Trial Date: Not Set

**STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND
RELEASE**

This Stipulation of Class and Representative Action Settlement and Release (“Settlement Agreement” or “Settlement”) is made and entered into between (1) Plaintiff Roy Wittbecker (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, the State of California, and all allegedly aggrieved employees, by and through his counsel of record, Setareh Law Group, (“Plaintiff’s Counsel” or “Class Counsel”); and (2) Defendant Cupertino Electric, Inc. (“Defendant”), by and through its counsel of record, Jackson Lewis P.C. (“Defense Counsel”).

This Settlement shall cover and be binding upon (1) Plaintiff, all Participating Class Members, the State of California (including but not limited to the California Labor Workforce Development Agency (“LWDA”), and all allegedly aggrieved employees, all of whom Plaintiff purports to represent in these actions; and (2) Defendant and its respective present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, partners, officers, directors, employees, agents, attorneys, successors and assigns, and any individual or entity which could be liable for any of the released claims (as defined below), subject to the terms and conditions hereof and the approval of the Court.

RECITALS

1. On July 7, 2020, Plaintiff submitted written notice of various alleged California Labor Code violations to the LWDA pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code section 2699, *et seq.* Specifically, Plaintiff alleged the following Labor Code violations: 201, 202, 203, 204, 221-223, 226, 226.7, 227.3, 256, 510, 512, 558, 1194, 1197.1, 1198, 1199, and 2802. Plaintiff submitted a second notice to the LWDA clarifying that the scope of Plaintiff’s PAGA claims included all employees who were subject to the violations alleged in Plaintiff’s July 7, 2020 notice to the LWDA. Plaintiff represents that the LWDA elected not to investigate Plaintiff’s claims within the relevant statutorily provided period.

2. On July 27, 2020, Plaintiff initiated this putative class action by filing a Class Action Complaint in Santa Clara County Superior Court, Case No. 20CV368613, on behalf of himself and all current and former non-exempt employees employed by Defendant in California, alleging the following causes of action: (1) failure to pay hourly wages, minimum wages, and overtime; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to pay vacation wages; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay all wages timely upon termination; (8) violation of California Business and Professions Code section 17200, *et seq.*; and (9) violation of the Fair Credit Reporting Act (“FCRA”) (“Class Action”).
3. On October 23, 2020, Plaintiff filed a subsequent Complaint in Santa Clara County Superior Court, Case No. 20CV371987, asserting a single a claim for civil penalties pursuant to PAGA based on the alleged violations of the following Labor Code sections: 201, 202, 203, 204, 210, 223, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1198 and 2802 (“PAGA Action”).
4. On February 21, 2022, Plaintiff and Defendant (collectively, “the Parties”) participated in mediation before Michael Dickstein, a respected mediator for wage and hour class actions. The Parties were unable to reach a settlement at that time.
5. On April 21, 2023, Defendant brought a Motion for Judgment on the Pleadings as to Plaintiff’s FCRA claim, which was granted on August 8, 2023.
6. On April 16, 2024, the Parties stipulated to consolidate the Class Action (Case No. 20CV368613) and the PAGA Action (Case No. 20CV371987), with Case No. 20CV368613 being designated as the lead case for all purposes (collectively, “the Action”).
7. On May 29, 2024, the Parties participated in a second mediation before David Rotman, Esq. (the “Mediator”), another respected mediator for wage and hour class actions, and through the Mediator’s efforts were able to reach a settlement in principle, subject to the

1 Court's approval. The settlement discussions were conducted at arm's-length, and the
2 settlement is the result of an informed and detailed analysis of Defendant's potential
3 liability of total exposure in relation to the costs and risks associated with continued
4 litigation. Further, the Parties conducted formal discovery, including Plaintiff's
5 deposition and the exchange of formal discovery requests, responses, and responsive
6 documents. Based on the documents and information produced, as well as Plaintiff's
7 Counsel's own independent investigation and evaluation, and the Mediator's efforts,
8 Plaintiff's Counsel believes that the settlement with Defendant for the consideration and
9 on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate, and
10 is in the best interest of the putative class members in light of the facts and circumstances,
11 including the risk of significant delay and uncertainty associated with litigation and
12 various defenses asserted by Defendant.

13 **8.** Defendant denies all material allegations set forth in the PAGA Notices and the operative
14 Complaints in the Action and has asserted numerous affirmative defenses and other
15 defenses to each and every claim. Defendant has also filed a Motion for Summary
16 Judgment or, in the Alternative, Summary Adjudication, which is currently pending and
17 set for hearing on October 9, 2024. Nevertheless, in the interest of avoiding the cost and
18 expense of further litigation, Defendant desires to fully and finally settle all actual or
19 potential claims by the putative class members.

20 **9.** This Settlement Agreement is made and entered into by and between (1) Plaintiff,
21 individually and on behalf of all others similarly situated, the State of California,
22 including the LWDA, and all allegedly aggrieved employees; and (2) Defendant, and is
23 subject to the terms and conditions hereof and the Court's approval. The Settlement is
24 made and entered into by the Parties for the purpose of resolving all claims asserted in
25 the PAGA Notices and the Actions, as well as all claims that could have been asserted in
26 the Actions based on the facts alleged in the PAGA Notices and operative Complaints in
27 the Actions. The Parties expressly acknowledge that this Settlement Agreement is
28

1 entered into solely for the purpose of compromising significantly disputed claims and
2 that nothing herein is an admission of liability or wrongdoing by Defendant. If for any
3 reason the Settlement Agreement is not approved, it will be of no force or effect, and the
4 Parties shall be returned to their original respective positions.

5 **DEFINITIONS**

6 **10.** This Settlement Agreement is intended by Plaintiff and Defendant to fully, finally, and
7 forever resolve, discharge, and settle the Released Claims (as defined below), upon and
8 subject to the terms and conditions hereof, as follows:

9 **10.1 “Action”** means the consolidated action entitled *Roy Wittbecker v. Cupertino*
10 *Electric, Inc.*, Santa Clara County Superior Court, Case Nos.
11 20CV368613/20CV371987.

12 **10.2 “Attorneys’ Fees and Costs”** means the attorneys’ fees and costs approved by the
13 Court for Class Counsel’s litigation and resolution of this Action, including, but not
14 limited to, attorney’s fees and costs associated with documenting the Settlement,
15 securing the Court’s approval of the Settlement, administering the Settlement,
16 obtaining entry of a Judgment terminating this Action, and expenses for any
17 experts. Class Counsel will request, and Defendant will not oppose, attorneys’ fees
18 of up to 33 1/3% of the Maximum Settlement Amount (*i.e.*, up to Three Million
19 Two Hundred and Twenty Five Thousand Dollars and Zero Cents (\$3,225,000).
20 Attorneys’ Fees and Costs also includes the additional reimbursement of any
21 reasonable costs and expenses associated with Class Counsel’s litigation and
22 settlement of the Action, not to exceed Forty Thousand Dollars and Zero Cents
23 (\$40,000), subject to the Court’s approval. Defendant has agreed not to oppose
24 Class Counsel’s cost application up to the above specified amounts. Any portion
25 of the requested attorneys’ fees and costs not awarded to Class Counsel by the Court
26 shall be added to the Net Class Settlement Amount for the benefit of Participating
27 Class Members.
28

1 **10.3 “Class” or “Settlement Class”** means all current and former non-exempt
2 employees who worked for Defendant in California at any time from July 27,
3 2016 through the date the Court issues an order granting preliminary approval of
4 the Settlement unless the end date of the settlement class period is adjusted pursuant
5 to section 13.9.

6 **10.4 “Class Counsel”** means Setareh Law Group, who will seek to be appointed
7 counsel for the Settlement Class.

8 **10.5 “Class Data”** means a complete list of all Class Members that Defendant will
9 diligently and in good faith compile from its records and provide to the Settlement
10 Administrator. Class Data will be formatted in a readable Microsoft Office Excel
11 spreadsheet and will include each Class Member’s (a) full name; (b) Social Security
12 Number; (c) most recent mailing address; and (d) dates of employment.

13 **10.6 “Class Member”** means any member of the Class.

14 **10.7 “Class Notice”** means the form of direct-mail notice to the Class, substantially in
15 the form attached hereto as “Exhibit A,” as may be modified by the Court. The
16 Class Notice shall include: (a) information regarding the nature of the Action; (b) a
17 summary of the Settlement’s principal terms; (c) the Settlement Class definition;
18 (d) the total number of workweeks and pay periods each respective Class Member
19 worked for Defendant during the Class Period and the PAGA Period (as defined
20 below); (e) each Class Member’s estimated Individual Settlement Payment and the
21 formula for calculating Individual Settlement Payments; (f) the dates that comprise
22 the Class Period and the PAGA Period; (g) information regarding disputing pay
23 periods, objections, or requests for exclusion from the Settlement (to the extent
24 permitted by this Settlement Agreement); (h) the deadlines by which Class
25 Members must fax or postmark disputes of pay periods, objections, or requests for
26 exclusion from the Settlement (to the extent permitted by this Settlement
27 Agreement); (i) the claims to be released through this Settlement; and (j) the date
28

1 for the Final Approval Hearing. The Class Notice shall be mutually agreed-upon
2 by the Parties and presented to the Court for approval.

3 **10.8 “Class Period”** means the period from July 27, 2016 through the date on which
4 the Court issues an order granting preliminary approval of the Settlement unless the
5 end date is adjusted pursuant to section 13.9 (all dates are inclusive).

6 **10.9 “Class Representative”** means Plaintiff Roy Wittbecker, who will seek to be
7 appointed as the representative for the Class.

8 **10.10 “Court”** means the Santa Clara County Superior Court.

9 **10.11 “Defendant”** means Defendant Cupertino Electric, Inc.

10 **10.12 “Effective Date”** means the date when all of the following events have occurred:
11 (1) the Settlement has been executed by all Parties, Class Counsel, and Defense
12 Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the
13 Class Notice has been given to Class Members, providing them with an opportunity
14 to object to or opt-out of the terms of this Settlement (to the extent permitted by
15 this Settlement Agreement); (4) the Court has held a formal fairness hearing and
16 entered a final Order and Judgment certifying the Settlement Class and approving
17 the Settlement; and (5) sixty-five (65) calendar days have passed since the Court
18 has entered a final Order and Judgment certifying the Settlement Class and
19 approving the Settlement or, if any appeal, writ, post judgment challenge, or other
20 appellate proceeding opposing the Court’s final Order approving the Settlement has
21 been filed, five (5) business days after any appeal, writ, post judgment challenge,
22 or other appellate proceedings opposing the Settlement has been finally and
23 conclusively dismissed with no right to pursue further remedies or relief.

24 **10.13 “Enhancement Payment”** means the amount to be paid to Plaintiff in recognition
25 of his effort and work in prosecuting the Action on behalf of the Class, the State of
26 California, and the PAGA Members, and his agreement to a full general release of
27 all claims, including a waiver of California Civil Code section 1542 as set forth
28

herein. The Parties agree that Plaintiff will be paid Twelve Thousand Dollars and Zero Cents (\$12,000) from the Maximum Settlement Amount as the Enhancement Payment, subject to the Court granting final approval of this Settlement and subject to the exhaustion of any and all appeals. Any portion of the Enhancement Payment not awarded to Plaintiff by the Court shall be added to the Net Class Settlement Amount for the benefit of Participating Class Members.

10.14 “Final Approval Hearing” means the hearing at which the Court will make a final determination whether the terms of the Settlement Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for approval, and, if the Settlement is so approved, whether a judgment should be entered thereon, whether the Class Representative’s application for Enhancement Payment should be granted, whether the Settlement Administrator’s costs are reasonable and should be granted, and whether an application by Class Counsel for an award of reasonable Attorneys’ Fees and Costs should be granted.

10.15 “Final Approval Order” means the final order by the Court approving the Settlement Agreement following the Final Approval Hearing.

10.16 “Individual Settlement Payment” means the total amount a Participating Class Member will receive under the terms of this Settlement. A Participating Class Member’s Individual Settlement Payment will be comprised of two parts: (1) his or her share of the Net Class Settlement Amount as determined by the formula set forth in this Settlement Agreement; and (2) if the Participating Class Member is a PAGA Member, his or her share of the portion of the PAGA Payment that will be distributed to allegedly aggrieved employees as determined by the formula set forth in this Settlement Agreement.

10.17 “Judgment” means the final judgment by the Court approving the Settlement and dismissing the Action with prejudice.

10.18 “Maximum Settlement Amount” means the maximum settlement amount that

Defendant shall be obligated to pay under this Settlement: Nine Million Six Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$9,675,000.00). In no event shall Defendant be required to pay more than the Maximum Settlement Amount, with the exception of Defendant's payment of employer's side payroll taxes as provided herein.

10.19 "Net Class Settlement Amount" means the Maximum Settlement Amount, less the amounts awarded by the Court for (1) Class Counsel's Attorney's Fees and Costs, (2) settlement administrative expenses, (3) the PAGA Payment, and (4) the Enhancement Payment. The Net Class Settlement Amount is the maximum amount that shall be made available and distributed to the Participating Class Members as part of their Individual Settlement Payments.

10.20 "PAGA Members" means the subclass of Class Members employed by Defendant in California at any time during the PAGA Period, who constitute the allegedly aggrieved employees within the meaning of PAGA in this Action.

10.21 "PAGA Notices" means the PAGA letters that Plaintiff submitted to the LWDA, in which Plaintiff alleged various Labor Code violations by Defendant.

10.22 "PAGA Payment" means the amount that the Parties have agreed to pay from the Maximum Settlement Amount to the LWDA in connection with PAGA and the resolution of all claims asserted or that could have been asserted under PAGA. The Parties have agreed that Three Hundred Thousand and Zero Cents (\$300,000) of the Maximum Settlement Amount will be allocated to the resolution of the claims under PAGA. Of this amount, and in accordance with PAGA, 75% (*i.e.*, [Two Hundred and Twenty Five Thousand] and Zero Cents (\$[225,000])) of the PAGA Payment will be paid to the LWDA and 25% (*i.e.*, [Seventy Five Thousand] and Zero Cents (\$[75,000])) of the PAGA Payment will be distributed to the PAGA Members in accordance with the formula set forth in this Settlement Agreement.

10.23 "PAGA Period" means the period from August 19, 2019 (*i.e.*, one year and sixty-

1 five days prior to the filing of the original Complaint in the PAGA Action on
2 October 23, 2020) through the date the Court issues an order granting preliminary
3 approval of the Settlement unless the end date is adjusted pursuant to section 13.9.

4 **10.24 “Participating Class Members”** means the Class Members who do not timely
5 request to be excluded from the Settlement (to the extent permitted by this
6 Settlement Agreement) pursuant to the terms set forth in the Class Notice and
7 approved by the Court.

8 **10.25 “Party” or “Parties”** means Plaintiff Roy Wittbecker and Defendant Cupertino
9 Electric, Inc., individually or collectively.

10 **10.26 “Plaintiff”** means Plaintiff Roy Wittbecker.

11 **10.27 “Released Class Claims”** means the claims released by Plaintiff and the
12 Participating Class Members, which include all claims under state, federal, or local
13 law, whether statutory or based in common law, arising out of the claims expressly
14 pleaded in the Action and all other claims that could have been pleaded based on
15 the facts pleaded in the Action including: failure to pay wages owed, including
16 minimum and overtime wages; failure to pay vacation wages; failure to provide
17 compliant meal and rest periods and associated meal and rest break premiums;
18 failure to reimburse business expenses; failure to timely pay all wages due to
19 discharged or quitting employees; failure to provide accurate wage statements;
20 alleged violation of Business and Professions Code Section 17200 based on the
21 alleged Labor Code violations; alleged violation of the IWC Wage Orders based on
22 the claims alleged; any claims for injunctive relief; liquidated damages, penalties,
23 interest, fees, and costs; and all other claims and allegations made or that could
24 have been made in the Action based on the facts and alleged in the Action.

25 **10.28 “Released Class Claims Period”** means the period from July 27, 2016 through the
26 date of Preliminary Approval of the Settlement unless the end date is adjusted
27 pursuant to section 13.9.

28

1 **10.29 “Released PAGA Claims”** means the claims released by Plaintiff, the State of
2 California (including the LWDA), and the PAGA Members, which include all
3 claims for civil penalties, attorney’s fees, and costs arising out of the Labor Code
4 claims and allegations expressly pleaded in the PAGA Notices and the Action, and
5 all other Labor Code claims that could have been asserted based on the facts and
6 allegations pleaded in the PAGA Notices and the Action, including but not limited
7 to: failure to pay wages owed, including minimum and overtime wages; failure to
8 pay vacation wages; failure to provide compliant meal and rest periods and
9 associated meal and rest break premiums; failure to reimburse business expenses;
10 failure to timely pay all wages due to discharged or quitting employees; failure to
11 pay wages timely during employment; and failure to provide accurate wage
12 statements.

13 **10.30 “Released PAGA Claims Period”** means the period from August 19, 2019
14 through the date of Preliminary Approval of the Settlement unless the end date is
15 adjusted pursuant to section 13.9.

16 **10.31 “Released Parties”** means Defendant and all of its present and former parent
17 companies, subsidiaries, divisions, concepts, related or affiliated companies, and
18 its shareholders, owners, members, officers, directors, employees, agents,
19 attorneys, insurers, successors and assigns, counsel of record in the Action, and any
20 individual or entity that could be liable for any of the claims released through this
21 Settlement.

22 **10.32 “Settlement Administrator”** means Simpluris, an independent third-party that
23 will be engaged by the Parties and paid out of the Maximum Settlement Amount,
24 with the approval of Defendant, to perform the notice, claims administration, and
25 distribution functions further described in this Settlement Agreement.

26 **10.33 “Settlement Agreement” or “Settlement”** means this Stipulation of Class and
27 Representative Action Settlement and Release, including any permitted and
28

executed amendments hereto.

TERMS OF AGREEMENT

11. NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

12. Class Action Certification.

12.1 Solely for purposes of settling the Action, and not for purposes of class action certification should the matter not be settled or for any other reason, the Parties stipulate and agree that the requisites for establishing class action certification with respect to the Settlement Class have been met and are met.

12.2 Should this Settlement not be approved by the Court or be terminated, the stipulations above with respect to class action certification shall be null and void and shall not be admissible for any purpose whatsoever.

13. Consideration/Payments to Class Members, Class Counsel, and Plaintiff.

13.1 Maximum Settlement Amount. Defendant shall pay Nine Million Six Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$9,675,000.00) in exchange for the resolution of all claims, causes of action, allegations, fees, expenses, and costs for this Action and settlement, including (1) Class Counsel's Attorney's Fees and Costs; (2) the Enhancement Payment; (3) settlement administration costs; (4) the PAGA Payment; and (5) the Individual Settlement Payments. In no event shall Defendant be required to pay more than the \$9,675,000.00 Maximum Settlement Amount, with the exception of Defendant's share of employer-side payroll taxes as provided herein

13.2 Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Class Counsel for Attorneys' Fees and Costs of not more than thirty-three percent (33 1/3%) of the Maximum Settlement (*i.e.*, up to Three Million Two Hundred and Twenty Five Thousand Dollars and Zero Cents (\$3,192,750)), plus the reimbursement of reasonable costs and expenses associated

1 with Class Counsel's litigation and settlement of the Action, not to exceed Forty
2 Thousand Dollars (\$ 40,000). All of the above attorneys' fees and costs will be
3 paid from the Maximum Settlement Amount.

4 **13.3 Enhancement Payment.** In exchange for a general release of all claims, and in
5 recognition of his effort and work in prosecuting the Action on behalf of the Class
6 Members, the State of California, and the PAGA Members, and negotiating the
7 Settlement, Defendant agrees not to oppose or impede any application or motion
8 for an Enhancement Payment of up to Twelve Thousand Dollars and Zero Cents
9 (\$12,000) to Plaintiff. The Enhancement Payment, which will be paid from the
10 Maximum Settlement Amount, will be in addition to Plaintiff's Individual
11 Settlement Payment paid pursuant to the Settlement. Plaintiff agrees, by executing
12 this Settlement, to a general release of all claims, including a waiver of California
13 Civil Code section 1542. The Settlement Administrator will issue an IRS Form
14 1099 for the Enhancement Payment to Plaintiff, and Plaintiff shall be solely and
15 legally responsible for correctly characterizing this compensation for tax purposes
16 and for paying any taxes on the amounts received. Plaintiff agrees to indemnify
17 and hold Defendant harmless from any claim or liability for taxes, penalties, or
18 interest arising as a result of the Enhancement Payment. Should the Court approve
19 the Enhancement Payment to the Class Representative in an amount less than that
20 set forth above, the amount shall be added to the Net Class Settlement Amount for
21 the benefit of the Participating Class Members.

22 **13.4 Settlement Administration Costs.** The Settlement Administrator will be paid for
23 the reasonable costs of administration of the Settlement and distribution of
24 payments from the Maximum Settlement Amount, which is currently estimated to
25 be Thirty Six Thousand Five Hundred Dollars (\$36,500). These expenses and
26 costs, which will be paid from the Maximum Settlement Amount, will include, inter
27 alia, the required tax reporting on the Individual Settlement Payments, the issuing
28

1 of 1099 and W-2 IRS Forms, distributing the Class Notice, calculating and
2 distributing the Maximum Settlement Amount and Attorneys' Fees and Costs, and
3 providing necessary reports and declarations. The Parties acknowledge that
4 Settlement Administration Costs may increase above the current estimate set forth
5 above and that any such additional Settlement Administration Costs will be taken
6 out of the Maximum Settlement Amount. Any portion of the estimated or
7 designated Settlement Administration Costs that are not in fact required to fulfill
8 the total Settlement Administration Costs will become part of the Net Class
9 Settlement Amount for the benefit of the Participating Class Members.

10 **13.5** PAGA Payment. Subject to Court approval, the Parties agree that the PAGA
11 Payments defined in Section 10.22 will be designated for satisfaction of Plaintiff's,
12 the State of California's, and the PAGA Members' claims under PAGA in the
13 Action.

14 **13.6** Individual Settlement Payments. Individual Settlement Payments will be
15 calculated based on the number of pay periods a Class Member worked during
16 the Class Period and the PAGA Period. Specific calculations of Individual
17 Settlement Payments will be made as follows:

18 (1) The Settlement Administrator will determine the number of pay
19 periods (rounded to the nearest whole or half pay period) worked
20 by each Participating Class Member during the Class Period, the
21 amount from the Net Class Settlement Amount to be paid per pay
22 period, the number of pay periods (rounded to the nearest whole or
23 half pay period) worked by each PAGA Member during the PAGA
24 Period, the amount from the PAGA Payment to be paid per pay
25 period, and the Individual Settlement Payments to be distributed to
26 each Class Member.

27 (2) Defendant's pay period data will be presumed to be correct, unless
28

a Class Member proves otherwise to the Settlement Administrator by credible evidence. All pay period disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all pay period disputes will be final and non-appealable.

(3) Distribution of the Net Class Settlement Amount will be calculated by dividing the Net Class Settlement Amount by the total number of pay periods for all Participating Class Members during the Class Period (resulting in the "Class Pay Period Value"), and then multiplying the Class Pay Period Value by the number of pay periods worked by each Participating Class Member during the Class Period.¹

(4) Distribution of the portion of the PAGA Payment allocable to alleged aggrieved employees will be calculated by dividing \$75,000 by the total number of pay periods for all PAGA Members during the PAGA Period (resulting in the "PAGA Pay Period Value"), and then multiplying the PAGA Pay Period Value by the number of pay periods worked by each PAGA Member during the PAGA Period.²

13.7 Settlement Awards Do Not Trigger Additional Benefits. All settlement awards to Class Members shall be deemed to be paid to such Class Members solely in the year in which such payments actually are received by the Class Members. It is expressly understood and agreed that the receipt of such individual settlement awards, which represent payments for disputed claims, will not entitle any Class Member to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period

¹ All pay period calculations shall be rounded to the nearest whole or half pay period.

² All pay period calculations shall be rounded to the nearest whole or half pay period.

covered by the Settlement, nor will it entitle any Class Member to any increased retirement, pension, 401K benefits or matching benefits, or deferred compensation benefits. Similarly, the settlement awards will not be considered back wages for work actually performed. It is the intent of this Settlement that the individual settlement awards provided for in this Settlement are the sole payments to be made by Defendant to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the individual settlement awards (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

13.8 Limitation on Fees and Costs. Except as provided in this Settlement Agreement, Defendant shall not be required to pay any other expenses, costs, damages or fees incurred by Plaintiff, by any Class Member, or by any of their attorneys, experts, advisors, agents or representatives. Any award of attorneys' fees and costs payable hereunder to Class Counsel, and the specific allocation of the award of attorneys' fees and costs payable to Class Counsel, shall be in complete satisfaction of any and all claims for such attorneys' fees and costs, under state or federal law, which Plaintiff, the Class, Class Counsel, or any other attorneys have or may have against Defendant arising out of or in connection with the Action and its settlement, including, but not limited to, any claims for attorneys' fees and costs involved in litigating the Action and in negotiating and implementing this Settlement Agreement, as well as attorneys' fees and costs incurred through and after the final disposition and termination of the Action and including any and all appeals. Defendant shall not be responsible for distributing or apportioning any award of attorneys' fees and costs among Class Counsel.

13.9 Adjustment of Class and PAGA Period End Date. In the event that the workweeks at the time of preliminary approval are more than 5% greater than the estimated

workweeks of 628,822, (or greater than 660,263) the Class and PAGA Period will be adjusted to an end date where the workweeks did not exceed that amount.

14. Releases and Judgment.

14.1 Release of Class Claims. Upon the Effective Date, Plaintiff and all Participating Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged with respect to all of the Released Parties any and all Released Class Claims that accrued during the Released Class Claims Period. As defined above, Released Class Claims include all claims under state, federal, or local law, whether statutory, arising out of the claims expressly pleaded in the Action and all other claims that could have been pleaded based on the facts pleaded in the Action including, but not limited to, any alleged failure to pay wages owed, including minimum and overtime wages, and vacation wages; failure to provide compliant meal and rest periods; failure to reimburse business expenses; failure to timely pay all wages due to discharged or quitting employees; failure to provide accurate wage statements; alleged violation of Business and Professions Code Section 17200 based on the alleged Labor Code violations; alleged violation of the IWC Wage Orders; any claims for injunctive relief; liquidated damages, penalties, interest, fees, and costs; and all other claims and allegations made or that could have been made in the Action based on the facts and allegations alleged in the Action.

14.2 Release of PAGA Claims. Upon the Effective Date, Plaintiff, the State of California (including the LWDA), and the PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged with respect to all of the Released Parties any and all Released PAGA Claims that accrued during the Released PAGA Claims Period. As defined above, Released PAGA Claims include all claims for civil penalties, attorney's fees, and

costs arising out of the Labor Code claims and allegations expressly pleaded in the Action, and all other Labor Code claims that could have been asserted based on the facts and allegations pleaded in the Action, including but not limited to: any alleged failure to pay wages owed, including minimum and overtime wages, and vacation wages; failure to provide compliant meal and rest periods; failure to reimburse business expenses; failure to timely pay all wages due to discharged or quitting employees; failure to pay wages timely during employment; and failure to provide accurate wage statements.

14.3 General Release by Plaintiff. In exchange for the benefits of this Settlement, including the Enhancement Payment, Plaintiff will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all claims, demands, rights, liabilities, and/or causes, of any form whatsoever, arising under federal, state or local wage-and-hour laws, rules, or regulations, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, that have been or could have been asserted by Plaintiff, or the heirs, successors and/or assigns of Plaintiff, whether directly, indirectly, representatively, derivatively or in any other capacity, against Defendant, and each of them, or any of the other Released Parties, arising at any time prior to entry of the Final Approval Order. Plaintiff also expressly waives all rights and benefits under the terms of section 1542 of the California Civil Code. Section 1542 reads 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.”

Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of all of his Released

Claims, Plaintiff expressly acknowledges that this Settlement is intended to include in its effect, without limitation, all Released Claims which Plaintiff does not know or suspect to exist in his favor at the time of execution hereof, and that the Settlement contemplates the extinguishment of all such Released Claims. This release by Plaintiff, however, does not apply to any claims which accrue after the execution of this Agreement.

14.4 FCRA Claims. The FCRA claims in the Action have already been dismissed with prejudice. For the sake of clarity, Plaintiff and Class Counsel agree not to appeal or take any further action on those dismissed claims.

14.5 Judgment. In exchange for the consideration set forth in this Settlement Agreement, Plaintiff, individually and on behalf of the Class Members, the State of California (including the LWDA), and the PAGA Members agree to enter Judgment with a release of all claims, as set forth herein.

15. Settlement Administration Process – Preliminary Approval.

15.1 Duties of Plaintiff and Class Counsel Prior to Preliminary Approval. Within five (5) business days of executing this Agreement, Plaintiff and Class Counsel shall submit a further amended PAGA notice to the LWDA and Defendant that (a) attaches the operative Complaint in the Class Action; and (b) asserts all of the alleged Labor Code violations alleged in the Class Action and PAGA Action. Within ten (10) business days of the sixty-five day exhaustion period under Labor Code section 2699.3 expiring, Plaintiff and Class Counsel shall file an amended consolidated Complaint that includes all of the allegations and alleged Labor Code violations currently alleged in the Class Action and PAGA Action.

15.2 Duties of the Parties for Preliminary Approval. The Parties shall promptly submit this Settlement Agreement to the Court in support of Plaintiff's Motion for Preliminary Approval and determination by the Court as to the Settlement's fairness, adequacy, and reasonableness. The Parties shall apply to the Court for

the entry of an order:

- (1) Conditionally certifying the Class for settlement purposes only;
- (2) Approving, as to form and content, the proposed Class Notice;
- (3) Approving the manner and method for Class Members to object and request exclusion from the Settlement as permitted herein and within the Class Notice;
- (4) Directing the mailing of the Class Notice;
- (5) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court.

Class Counsel shall draft the Motion for Preliminary Approval and all other materials required for Preliminary Approval, including the Class Notice and the Proposed Order Granting Preliminary Approval. Defendant will be provided at least five (5) business days to review and comment on the drafts. Unless Defendant agrees otherwise, Class Counsel shall file the Motion for Preliminary Approval within sixty (60) days of signing this Settlement. The Class Notice and Proposed Order Granting Preliminary Approval must be mutually agreed-upon by the Parties.

15.3 Delivery of the Class Data. Within fourteen (14) calendar days of the date on which the Court issues an order granting preliminary approval of the Settlement, Defendant will provide the Class Data to the Settlement Administrator.

15.4 Class Notice by First-Class U.S. Mail. Within twenty-one (21) calendar days of the date on which the Defendant provides the Class Data to the Settlement Administrator, the Settlement Administrator shall mail the Class Notice via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class Data. Prior to mailing the Class Notices, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian,

1 for information to update and correct for any known or identifiable address
2 changes.

3 **15.5** Time for Pay Period Disputes, Objections, and Exclusions. Class Members will
4 have forty-five (45) calendar days from the date on which the Settlement
5 Administrator mails the Class Notices in which to fax or postmark disputes of pay
6 periods, objections, or requests for exclusion from the Settlement (to the extent
7 permitted by Sections 15.76, 15.9, and 15.10 of this Settlement Agreement). The
8 Settlement Administrator will skip-trace return mail and re-mail within five (5)
9 calendar days.

10 **15.6** Disputed Information on Class Notices. Class Members will have an opportunity
11 to dispute the information provided in their Class Notices. To the extent Class
12 Members dispute the number of pay periods to which they have been credited or
13 the estimated amount of their portion of the Net Class Settlement Amount, Class
14 Members may produce evidence to the Settlement Administrator showing that
15 such information is inaccurate. Absent evidence rebutting Defendant's records,
16 Defendant's records will be presumed determinative. However, if a Class Member
17 produces evidence to the contrary, the Settlement Administrator will make the
18 final decision as to the number of eligible pay periods that should be applied
19 and/or the Individual Settlement Payment to which the Class Member may be
20 entitled.

21 **15.7** Request for Exclusion Procedures.³ Any Class Member wishing to be excluded
22 from the Settlement Agreement must sign and postmark or fax a written request
23 for exclusion from the Settlement to the Settlement Administrator within the
24 applicable deadline (see Section 15.5). The request for exclusion must: (a) be
25 signed by the Class Member; (b) contain the name, address, telephone number,
26 and the last four digits of the Social Security Number of the Class Member
27

28 ³ This Section is subject to the limitations provided in Section 19.9.

requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the settlement; (d) be returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number; and, (e) be postmarked or faxed on or before the applicable response deadline. The date of fax or the postmark on the return mailing envelope will be the exclusive means to determine whether a request for exclusion from the Settlement has been timely submitted. All requests for exclusion from the Settlement will be submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the requests for exclusion that were timely submitted. Any Class Member who submits a request for exclusion from the Settlement is prohibited from making any objection to the Settlement Agreement.

15.8 Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any Class Member who does not affirmatively request an exclusion from the Settlement Agreement by submitting a timely and valid request for exclusion from the Settlement will be bound by all of its terms, including those pertaining to the Released Class Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement.

15.9 Objection Procedures.⁴ To object to the Settlement Agreement, a Class Member must postmark a valid Notice of Objection to the Settlement Administrator on or before the applicable deadline (see Section 15.5). The Notice of Objection must include: (1) the case name and number; (2) full name, address, and telephone number; (3) the last four digits of Social Security Number; (4) a written statement of all grounds for the objection accompanied by any legal support for such objection; (5) copies of any papers, briefs, or other documents upon which the objection is based; and (6) be signed by the Class Member and the Class Member's attorney in the event that the Class Member is represented by counsel. The

⁴ This Section is subject to the limitations provided in Section 19.9.

1 postmark date will be deemed the exclusive means for determining that the Notice
2 of Objection is timely. The Settlement Administrator shall forward any
3 Objections to the Parties' Counsel within three (3) calendar days of receipt and
4 the Parties shall be responsible for e-filing any Objections with the Court three
5 (3) calendar days thereafter. Class Members who fail to object in the specific and
6 technical manner specified above will be deemed to have waived all objections to
7 the Settlement and will be foreclosed from making any objections and seeking
8 any adjudication or review, whether by appeal or otherwise, to the Settlement
9 Agreement. At no time will any of the Parties or their counsel seek to solicit or
10 otherwise encourage Class Members to submit written objections to the
11 Settlement Agreement or appeal from the Order and Judgment. Class Counsel
12 will not represent any Class Members with respect to any such objections to this
13 Settlement.

14 **15.10 No Right to Object to or Request Exclusion from the Settlement of PAGA Claims.**

15 The Parties agree that there is no statutory right for any Class Member to opt out
16 of or otherwise exclude himself or herself from the settlement of the PAGA
17 claims. Accordingly, any timely exclusion from the Settlement submitted by a
18 Class Member shall be construed as relating only to the putative class action
19 claims and shall have no effect whatsoever on the settlement of the PAGA claims.

20 **15.11 Certification Reports Regarding Individual Settlement Payment Calculations.** The

21 Settlement Administrator will provide Defendant's counsel and Class Counsel a
22 weekly report which certifies: (a) the number of Participating Class Members
23 from the Class who have submitted a dispute of pay periods; (b) the number of
24 Class Members who have submitted valid requests for exclusion from the
25 Settlement or objections; and (c) whether any Class Member has submitted a
26 challenge to any information contained in the Class Notice. Additionally, the
27 Settlement Administrator will provide to counsel for both Parties any updated
28

1 reports regarding the administration of the Settlement Agreement as needed or
2 requested and forward any objections to the Parties' counsel within three (3)
3 calendar days of receipt.

4 **15.12 Revocation Option for Defendant.** If five percent (5%) or more of the Class
5 Members opt out of the Settlement, Defendant may, at its election, rescind the
6 Settlement and all actions taken in furtherance of it will thereby be null and void.
7 Defendant must exercise this right of rescission, in writing, to Class Counsel within
8 ten (10) business days after the Claims Administrator notifies the Parties of a
9 greater than five percent (5%) opt-out rate.

10 **16. Settlement Administration Process – Final Approval and Settlement Distribution.**

11 **16.1 Duties of the Parties for Final Approval.** Upon expiration of the deadlines to
12 postmark pay period disputes, requests for exclusion from the Settlement (to the
13 extent permitted by this Settlement Agreement), or objections to the Settlement
14 (to the extent permitted by this Settlement Agreement), and with the Court's
15 permission, a Final Approval Hearing shall be conducted for (a) approving the
16 Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and
17 directing consummation of its terms and provisions; (b) approving Class
18 Counsel's application for an award of attorneys' fees and costs; (c) approving the
19 Class Representative Enhancement Payment to the Class Representative; (d)
20 setting a date when the Parties shall report to the court the total amount that was
21 actually paid to the Class Members; and (e) entering judgment in this Action.
22 Class Counsel shall draft all documents necessary to obtain final approval,
23 including the Proposed Order Granting Final Approval and Entering Judgment.
24 Defendant shall receive at least five (5) business days to review and comment on
25 said drafts. Unless Defendant agrees otherwise, Class Counsel shall file the
26 Motion for Final Settlement Approval within sixty (60) days of the expiration of
27 the deadlines to postmark requests for exclusion from the Settlement. The
28

Proposed Order Granting Final Approval and Entering Judgment must be mutually agreed upon by the Parties.

16.2 Funding of Settlement Amount. Within seven (7) business days after the Effective Date, the Settlement Administrator will provide the Parties with: (1) a full accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement; and (2) all information required for Defendant to cause the wiring of the Maximum Settlement Amount securely to a Qualified Settlement Account established by the Settlement Administrator. Within twenty-one (21) business days of the Effective Date, Defendant will make or otherwise cause a one-time wire deposit of Nine Million Six Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$9,675,000.00) and the employer's share of payroll taxes for payment of all Court approved and claimed amounts constituting the Maximum Settlement Amount into a Qualified Settlement Account to be established by the Claims Administrator.

16.3 Settlement Distribution. Within seven (7) business days of the funding of Maximum Settlement Amount, the Settlement Administrator will issue settlement payments to (1) the Participating Class Members; (2) the PAGA Members; (3) the LWDA; (4) Plaintiff; and (5) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the settlement.

16.4 Settlement Checks. The Settlement Administrator will be responsible for making appropriate deductions, reporting obligations, and issuing the individual settlement payments. The expiration date on the settlement checks will be one hundred and twenty (120) calendar days from the date the settlement checks are issued.

16.5 Uncashed Checks. All uncashed checks will be submitted to a mutually agreeable cy pres organization subject to court approval.

1 **16.6** Payroll Taxes. In accordance with this Settlement, the transfer of the Maximum
2 Settlement Amount approved by the Court shall, to the fullest extent possible,
3 resolve, satisfy and completely extinguish all of Defendant's liability with respect
4 to the Settlement Class except that Defendant shall solely be responsible for the
5 employer portion of the payroll taxes. Upon the transfer of the Maximum
6 Settlement Amount and the additional share of employer-side payroll taxes to the
7 Settlement Administrator, Defendant shall have no further payment or defense
8 obligation whatsoever with respect to any claims covered by this Settlement made
9 or asserted by any person or entity anywhere in the world in connection with the
10 Class Members.

11 **16.7** Treatment of Individual Settlement Payments. All distributions from the Net
12 Class Settlement Amount will be allocated as follows: 20% of each Individual
13 Settlement Payment will be allocated as disputed wages, 40% will be allocated as
14 interest and the remaining 40% will be allocated as penalties. All distributions
15 from the PAGA Payment to the PAGA Members will be allocated as 100%
16 penalties. The portion allocated to wages will be reported on an IRS Form W-2
17 and the portions allocated to interest and penalties will be reported on an IRS
18 Form-1099 by the Settlement Administrator.

19 **16.8** Administration of Taxes by Settlement Administrator. The Settlement
20 Administrator will be responsible for issuing to Plaintiff, Participating Class
21 Members, PAGA Members, itself, and Class Counsel any W-2, 1099, or other tax
22 forms as may be required by law for all amounts paid pursuant to this Agreement.
23 The Settlement Administrator will also be responsible for forwarding all payroll
24 taxes and penalties to the appropriate government authorities.

25 **16.9** Certification of Completion. Upon completion of administration of the
26 Settlement, the Settlement Administrator will provide a written declaration under
27 oath to certify such completion to the Court and counsel for all Parties. Plaintiff
28

1 and Class Counsel will file a Satisfaction of Judgment within ten (10) calendar
2 days of the submission of said declaration.

3 **17. Other Terms and Provisions.**

4 **17.1** LWDA Submissions for Settlement Approval. The Parties agree that Plaintiff
5 shall comply with all requirements of PAGA regarding settlement of claims,
6 including timely filing a notice of claim and notice of settlement with the LWDA.

7 **17.2** Tax Liability. Defendant, Defendant's counsel, and Plaintiff's counsel make no
8 representation as to the tax treatment or legal effect of the payments called for
9 hereunder, and Plaintiff and Class Members are not relying on any statement,
10 representation, or calculation by Defendant or by the Administrator in this regard.
11 Plaintiff and Class Members understand and agree that except for Defendant's
12 payment of the employer's portion of any payroll taxes, Plaintiff and Class
13 Members will be solely responsible for the payment of any taxes and penalties
14 assessed on the payments described herein.

15 **17.3** Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
16 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND
17 EACH PARTY TO THIS AGREEMENT OTHER THAN THE
18 ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES
19 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
20 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG
21 THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
22 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR
23 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
24 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
25 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
26 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
27 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL
28

1 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
2 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
3 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
4 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER
5 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
6 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER
7 TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
8 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY
9 OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
10 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S
11 OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
12 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
13 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
14 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
15 CONTEMPLATED BY THIS AGREEMENT.

16 **17.4** No Prior Assignments. The Parties and their counsel represent, covenant, and
17 warrant that they have not directly or indirectly assigned, transferred,
18 encumbered, or purported to assign, transfer, or encumber to any person or entity
19 any portion of any liability, claim, demand, action, cause of action or right herein
20 released and discharged.

21 **17.5** Termination of Settlement. Either Party may terminate this Settlement if the Court
22 declines to enter the Preliminary Approval Order, the Final Approval Order, or
23 final judgment in substantially the form submitted by the Parties, or the
24 Settlement Agreement as agreed does not become final because of appellate court
25 action. The terminating Party shall give to the other Party (through its counsel)
26 written notice of its decision to terminate no later than ten (10) calendar days after
27 receiving notice that one of the enumerated events has occurred. Termination
28

shall have the following effects:

- (1) The Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms;
- (2) In the event the Settlement is terminated, Defendant shall have no obligation to make any payments to any party, the State of California (including the LWDA), any class member or any attorney, except that the terminating Party shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the settlement has been terminated;
- (3) The Preliminary Approval Order, Final Approval Order and Judgment, including any order of class action certification, shall be vacated;
- (4) The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the settlement;
- (5) Neither this Settlement, nor any ancillary documents, actions, statements or filings in furtherance of Settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever.

17.6 Judgment and Continued Jurisdiction. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Agreement.

17.7 Exhibits Incorporated by Reference. The terms of this Settlement include the

1 terms set forth in any attached exhibits, which are incorporated by this reference
2 as though fully set forth herein. Any exhibits to this Agreement are an integral
3 part of the Settlement.

4 **17.8** Confidentiality. Plaintiff and Class Counsel agree they will not make any public
5 disclosure of the Settlement until after this Settlement is preliminarily approved by
6 the Court. Class Counsel will take all steps necessary to ensure the Class
7 Representative is aware of, and will encourage him to adhere to, the restriction
8 against any public disclosure of this Settlement until after this Settlement is
9 preliminarily approved by the Court. Class Counsel will not include or use the
10 Settlement for any marketing or promotional purposes. In the event that Class
11 Counsel inadvertently violates this provision, it may cure such violation by
12 withdrawing all marketing or promotional materials in violation of this provision
13 within ten (10) calendar days of receipt of notice of the violation from Defendant.

14 Following preliminary approval of the Settlement, the Class
15 Representative and Class Counsel will not have any communications with any
16 media other than to direct any media inquiries to the public records of the Action
17 on file with the Court. Further, Plaintiff and Plaintiff's counsel may communicate
18 with Class Members about this settlement and lawsuit, as well as provide any
19 further information as requested by any courts, the LWDA, and other state and/or
20 federal agencies. Nothing herein will restrict Class Counsel from including
21 publicly available information regarding this Settlement in future judicial
22 submissions regarding Class Counsel's qualifications and experience.

23 The Parties agree that violation of this Section constitutes a breach of the
24 agreement that cannot practically be cured. Thus, any action to enforce this
25 provision may be brought on an *ex parte* or otherwise expedited basis, and
26 Defendant may seek any and all available remedies, including but not limited to
27 injunctive relief.

1 **17.9** Entire Agreement. This Settlement Agreement, including all exhibits annexed
2 hereto, sets forth the entire agreement of the Parties with respect to its subject matter
3 and supersedes any and all other prior agreements and all negotiations leading up
4 to the execution of this Settlement Agreement, whether oral or written, regarding
5 the subjects covered herein. The Parties acknowledge that no representations,
6 inducements, warranties, promises, or statements relating to the subjects covered
7 herein, oral or otherwise, have been made by any of the Parties or by anyone acting
8 on behalf of the Parties which are not embodied or incorporated by reference herein,
9 and further agree that no other agreement, covenant, representation, inducement,
10 promise or statement relating to the subjects covered herein not set forth in writing
11 in this Settlement Agreement, shall be valid or binding.

12 **17.10** Amendment or Modification. This Settlement Agreement may be amended or
13 modified only by a written instrument signed by the named Parties and counsel
14 for all Parties or their successors-in-interest.

15 **17.11** Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
16 and represent they are expressly authorized by the Parties whom they represent to
17 negotiate this Settlement Agreement and to take all appropriate action required or
18 permitted to be taken by such Parties pursuant to this Settlement Agreement to
19 effectuate its terms and to execute any other documents required to effectuate the
20 terms of this Settlement Agreement. The Parties and their counsel will cooperate
21 with each other and use their best efforts to effect the implementation of the
22 Settlement. If the Parties are unable to reach agreement on the form or content of
23 any document needed to implement the Settlement, or on any supplemental
24 provisions that may become necessary to effectuate the terms of this Settlement,
25 the Parties may seek the assistance of the Court and/or Mediator to resolve such
26 disagreement.

27 **17.12** Signatories. It is agreed that because the members of the Class are so numerous,
28

1 it is impossible or impractical to have each member of the Class execute this
2 Settlement Agreement. The Class Notice, attached hereto as Exhibit "A," will
3 advise all Class Members of the binding nature of the release, and the release shall
4 have the same force and effect as if this Settlement Agreement were executed by
5 each member of the Class.

6 **17.13 Binding on Successors and Assigns.** This Settlement Agreement will be binding
7 upon, and inure to the benefit of, the successors or assigns of the Parties hereto,
8 as previously defined.

9 **17.14 Execution and Counterparts.** This Settlement Agreement is subject only to the
10 execution of all Parties. However, the Agreement may be executed in one or
11 more counterparts, by DocuSign, facsimile, and/or by PDF/email. All executed
12 counterparts and each of them, including facsimile and scanned copies of the
13 signature page, will be deemed to be one and the same instrument provided that
14 counsel for the Parties will exchange among themselves original signed
15 counterparts.

16 **17.15 Acknowledgement that the Settlement is Fair, Reasonable, and Adequate.** The
17 Parties believe this Settlement Agreement is a fair, adequate, and reasonable
18 settlement of the Action, believe this Settlement Agreement is consistent with and
19 advances the purposes of PAGA, and have arrived at this Settlement after arm's-
20 length negotiations and in the context of adversarial litigation, taking into account
21 all relevant factors, present and potential. The Parties further acknowledge that
22 they are each represented by competent counsel and that they have had an
23 opportunity to consult with their counsel regarding the fairness and
24 reasonableness of this Agreement.

25 **17.16 Invalidity of Any Provision.** Before declaring any provision of this Settlement
26 Agreement invalid, the Court will first attempt to construe the provision as valid
27 to the fullest extent possible consistent with applicable precedents so as to define
28

1 all provisions of this Settlement Agreement valid and enforceable. In the event
2 that any one or more of the provisions contained in this Settlement Agreement shall
3 for any reason be held invalid, illegal, or unenforceable in any respect, such
4 invalidity, illegality, or unenforceability shall in no way affect any other provision
5 if Defendant's and Class Counsel, on behalf of the Settling Parties and the Class,
6 mutually elect in writing to proceed as if such invalid, illegal, or unenforceable
7 provision had never been included in this Settlement Agreement.

8 **17.17 Plaintiff's Waiver of Right to Be Excluded from the Settlement and Object.**

9 Plaintiff agrees to sign this Settlement Agreement and, by signing this Settlement
10 Agreement, is hereby bound by the terms herein, including the general release of
11 all claims upon the Effective Date of this Settlement.

12 **17.18 Waiver of Certain Appeals.** The Parties agree to waive appeals and to stipulate to
13 class action certification for purposes of this Settlement only. Either party may
14 appeal any court order that materially alters the Settlement Agreement's terms.
15 The Parties agree that the Court's approved amounts for the Enhancement
16 Payment and the Settlement Administrator's costs do not constitute material
17 alterations of the Settlement, but Class Counsel may appeal an award of Attorney
18 Fees and Costs that is less than the requested amount (while the rest of the
19 Agreement will remain undisturbed and binding).

20 **17.19 Non-Admission of Liability.** The Parties enter into this Settlement to resolve the
21 dispute that has arisen between them and to avoid the burden, expense and risk of
22 continued litigation. In entering into this Agreement, Defendant does not admit,
23 and specifically denies, it has violated any state, federal, or local law; violated
24 any regulations or guidelines promulgated pursuant to any statute or any other
25 applicable laws, regulations or legal requirements; breached any contract;
26 violated or breached any duty; engaged in any misrepresentation or deception; or
27 engaged in any other unlawful conduct with respect to its employees. Neither this
28

1 Settlement, nor any of its terms or provisions, nor any of the negotiations
2 connected with it, shall be construed as an admission or concession by Defendant
3 of any such violations or failures to comply with any applicable law. Except as
4 necessary in a proceeding to enforce the terms of this Settlement, this Settlement
5 and its terms and provisions shall not be offered or received as evidence in any
6 action or proceeding to establish any liability or admission on the part of
7 Defendant or to establish the existence of any condition constituting a violation
8 of, or a non-compliance with state, federal, local or other applicable law.

9 **17.20** Captions. The captions and section numbers in this Settlement Agreement are
10 inserted for the reader's convenience, and in no way define, limit, construe or
11 describe the scope or intent of the provisions of this Agreement.

12 **17.21** Waiver. No waiver of any condition or covenant contained in this Settlement or
13 failure to exercise a right or remedy by any of the Parties hereto will be considered
14 to imply or constitute a further waiver by such party of the same or any other
15 condition, covenant, right or remedy.

16 **17.22** Enforcement Actions. In the event that one or more of the Parties institutes any
17 legal action or other proceeding against any other Party or Parties to enforce the
18 provisions of this Settlement or to declare rights and/or obligations under this
19 Settlement, the successful Party or Parties will be entitled to recover from the
20 unsuccessful Party or Parties reasonable attorneys' fees and costs, including
21 expert witness fees incurred in connection with any enforcement actions.

22 **17.23** Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
23 and conditions of this Agreement. Accordingly, this Settlement will not be
24 construed more strictly against one party than another merely by virtue of the fact
25 that it may have been prepared by counsel for one of the Parties, it being
26 recognized that, because of the arms-length negotiations between the Parties, all
27 Parties have contributed equally to the preparation of this Agreement.
28

1 **17.24 Representation by Counsel.** The Parties acknowledge that they have been
2 represented by counsel throughout all negotiations that preceded the execution of
3 this Settlement, and that this Settlement has been executed with the consent and
4 advice of counsel, and reviewed in full. Further, Plaintiff and Class Counsel
5 warrant and represent that there are no liens on the Settlement Agreement.

6 **17.25 Notices.** Unless otherwise specifically provided herein, all notices, demands or
7 other communications given hereunder shall be in writing and shall be deemed to
8 have been duly given as of the third business day after mailing by United States
9 registered or certified mail, return receipt requested, addressed as follows:

10 To Plaintiff and the Settlement Class:

11 Shaun Setareh, Esq.
12 Thomas Segal, Esq.
13 Farrah Grant, Esq.
14 SETAREH LAW GROUP
15 420 N. Camden Drive., Suite 100
16 Beverly Hills, California 90210

17 To Defendant:

18 Mia Farber, Esq.
19 Scott P. Jang, Esq.
20 Isabella L. Shin, Esq.
21 JACKSON LEWIS P.C.
22 725 South Figueroa Street, Suite 2500
23 Los Angeles, CA 90017

24 **17.26 Cooperation and Execution of Necessary Documents.** All Parties will cooperate
25 in good faith and execute all documents to the extent reasonably necessary to
26 effectuate the terms of this Settlement Agreement.

27 **17.27 Integration Clause.** This Settlement Agreement contains the entire agreement
28 between the Parties relating to the settlement and transaction contemplated
 hereby, and all prior or contemporaneous agreements, understandings,
 representations, and statements, whether oral or written and whether by a party or

such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

17.28 Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all parties, including the State of California and the LWDA, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under state or federal law. The Parties further agree that this Agreement is enforceable pursuant to California Code of Civil Procedure section 664.6, and that the Court shall retain jurisdiction to enforce the Settlement upon entering of judgment.

18. IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily execute this Stipulation of Class, and Representative Action Settlement and Release between Plaintiff and Defendant as of the date(s) set forth below:

SIGNATURES

READ CAREFULLY BEFORE SIGNING

Date: 10/28, 2024



ID V96dsDSgknJK6RjDSXdw5Uxn

Roy Wittbecker
Plaintiff, Class Representative, and
Representative of the State of
California

CUPERTINO ELECTRIC, INC.

Date: 11/4, 2024

Signed by:

EDBE8E9DEEA0494...
Authorized Representative
Debra Olson

APPROVED AS TO FORM AND CONTENT

Date: 11/4, 2024

SETAREH LAW GROUP




ID ePtqesrmLmBSSfRNzxVZh89n

Shaun Setareh
Thomas Segal
Farrah Grant
Attorneys for Plaintiff
ROY WITTBECKER, the Class Members,
and the State of California

Date: 11/7, 2024

JACKSON LEWIS P.C.



Mia Farber
Scott P. Jang
Isabella L. Shin
Attorneys for Defendant
CUPERTINO ELECTRIC, INC.

eSignature Details

Signer ID:	V96dsDSgknJK6RjDSXdw5Uxn
Signed by:	Roy H. Wittbecker
Sent to email:	roy_wittbecker@yahoo.com
IP Address:	16.98.104.22
Signed at:	Oct 28 2024, 12:06 pm PDT

eSignature Details

Signer ID:	ePtqesrmLmBSSfRNzxVZh89n
Signed by:	Shaun Setareh
Sent to email:	shaun@setarehlaw.com
IP Address:	12.160.160.211
Signed at:	Nov 4 2024, 1:43 pm PST

EXHIBIT A

NOTICE OF CLASS AND REPRESENTATIVE PAGA ACTION SETTLEMENT

*Roy Wittbecker v. Cupertino Electric, Inc.
Santa Clara Superior Court Case Nos. 20CV368613 and 20CV371987*

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

If you are or were employed by Cupertino Electric, Inc. (“CEI”) as an hourly, non-exempt employee in California at any time from July 27, 2016 through [DATE], this proposed settlement may affect your rights. Please read this Notice carefully.

1. What is this Notice?

A proposed settlement (“Settlement”) has been reached in two related cases: (1) *Wittbecker v. Cupertino Electric, Inc.*, Santa Clara Superior Court Case No. 20CV368613; and (2) *Wittbecker v. Cupertino Electric, Inc.*, Santa Clara Superior Court Case No. 20CV371987 (collectively, the “Actions”).

CEI’s records show that you worked for CEI as an hourly, non-exempt employee in the State of California at some point during the period from July 27, 2016 through [DATE] (the “Class Period”). Therefore, you may be a member of the proposed Settlement of the Actions. The purpose of this Notice of Class and Representative PAGA Action Settlement (“Notice”) is to describe the Actions and the Settlement, and to inform you of your rights and options in connection with the Settlement.

PLEASE NOTE THAT THE COURT HAS NOT DETERMINED THAT CEI VIOLATED THE LAW. CEI ADMANTLY DENIES THAT IT VIOLATED ANY LAWS OR THAT IT HARMED ITS EMPLOYEES IN ANY WAY. CEI IS SETTLING THESE LAWSUITS TO AVOID THE EXPENSE AND BURDEN OF FURTHER LITIGATION.

2. What are the cases about?

Plaintiff Roy Wittbecker (“Wittbecker”) was a former Groundman working as a Field Mechanic in California from March 2019 to July 2019.

On July 27, 2020, Wittbecker filed a putative class action complaint against CEI on behalf of himself and all other similarly situated. The case is pending in Santa Clara Superior Court as Case No. 20CV368613 (“the Potential Class Action”). The Potential Class Action alleges claims for (1) failure to pay hourly wages, minimum wages, and overtime; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to pay vacation wages; (5) failure to reimburse business expenses; (6) failure to provide accurate wage statements; (7) failure to pay all wages timely during employment and upon termination; and (8) unfair competition. The Potential Class Action also asserted a claim for violation of the Fair Credit Reporting Act, but the Court dismissed that claim.

On October 23, 2020, Wittbecker filed a Labor Code Private Attorneys General Act (“PAGA”) action against CEI. The case is pending Santa Clara Superior Court as Case No. 20CV371987 (“the PAGA Action”). The PAGA action seeks civil penalties on behalf of the State of California and allegedly aggrieved employees, including Wittbecker. According to First Amended Complaint, filed on [DATE], the PAGA action alleges similar Labor Code violations as the Potential Class Action for alleged (1) failure to pay hourly wages, minimum wages, and overtime; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to pay vacation wages; (5) failure to reimburse business expenses; (6) failure to provide accurate wage statements; and (7) failure to pay all wages timely during employment and upon termination.

As noted above, CEI adamantly denies that it violated the law in any way. CEI denies, and continues to deny, the factual and legal allegations in the Actions and believes that CEI has valid defenses to Wittbecker’s claims – including the fact that CEI employees are covered by valid collective bargaining agreements negotiated with its unions. CEI recognizes, however, the risks and costs associated with litigation, as well as the disruption to its business. CEI contends that Wittbecker’s claims do not have merit and do not meet the requirements for class

certification. By agreeing to settle, CEI is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class or representative PAGA action.

The Court has not ruled on the merits of Wittbecker's claims or CEI's defenses. This Settlement is a compromise reached after good faith, arm's length negotiations between Wittbecker and CEI (the "Parties") and is not an admission of liability on the part of CEI. Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Wittbecker and his attorneys also believe that this Settlement is in the best interests of the class members and the State of California.

3. Who is affected by the Settlement?

1. You are eligible to participate as a member of the Settlement of the Potential Class Action ("Potential Class Members") if you meet the following definition:

All hourly, non-exempt employees who are currently or have been employed by CEI in the State of California at any time during the period from **July 27, 2016 through [DATE]** ("Class Period").

2. You are eligible to participate as a member of the Settlement of the PAGA Action ("PAGA Members") if you meet the following definition:

All hourly, non-exempt employees who are currently or have been employed by CEI in the State of California at any time during the period from **August 19, 2019 through [DATE]** ("PAGA Period").

According to CEI's records, you are eligible to participate as a member of the Settlement of the Potential Class Action and/or PAGA Action.

4. What are the Settlement terms?

Subject to approval by the Court, the Settlement provides that CEI will pay a maximum settlement amount of \$9,675,000 (the "Maximum Settlement Amount") to resolve the Actions. This Maximum Settlement Amount includes the following payments:

1. An award of reasonable attorneys' fees to Class Counsel in an amount not to exceed \$3,225,000;
2. Reimbursement of Class Counsel's litigation costs and expenses in an amount not to exceed \$40,000;
3. An enhancement payment to Wittbecker in an amount not to exceed \$12,000;
4. Settlement administration costs in an amount not to exceed **[AMOUNT]**;
5. Payments to Participating Class Members; and
6. PAGA Penalties to the State of California and PAGA Members in the total amount of \$300,000.

Payments to Participating Class Members ("Individual Settlement Awards") – The Net Settlement Amount (i.e., the Maximum Settlement Amount, less the Court-approved amounts for attorneys' fees and litigation costs, the enhancement payment, settlement administration costs, and the portion of the PAGA Penalty to be paid to the California Labor and Workforce Development Agency ("LWDA") and PAGA Members) will be paid to Class Members who do not opt out of the settlement by submitting a written request for exclusion ("Participating Class Members"). The amount of the Individual Settlement Awards will be determined on a *pro rata* basis, based on each Participating Class Member's respective number of compensable workweeks worked during the Class Period, in relation to the number of Compensable Weeks worked by all Participating Class Members during the period from July 27, 2016 through **[DATE]**.

Payments to All PAGA Members – \$75,000, which is twenty-five percent (25%) of the total PAGA Penalty of \$300,000, will be allocated towards payments to all PAGA Members, which will be calculated on a *pro rata* basis, based on the number of pay periods that each PAGA Member worked during the PAGA Period in relation to the total number of pay periods worked by all PAGA Members during the PAGA Period. All PAGA Members – regardless of whether they request to be excluded from the Settlement – will receive a PAGA Payment.

Tax Considerations – For tax purposes, Individual Settlement Awards will be allocated as follows: 20% as wages (the “wage portion”) and 80% as non-wage income, penalties, and interest (the “non-wage portion”). The wage portion of each Individual Settlement Award will be subject to payroll taxes and withholdings and will be reported on an IRS Form W-2. The non-wage portion of the Individual Settlement Award will not be subject to payroll taxes or withholdings, and such amounts will be reported on an IRS Form 1099. CEI’s share of payroll taxes and withholdings with respect to the wage portion of the Individual Settlement Award will be paid by CEI separately from and in addition to the Maximum Settlement Amount.

One hundred percent (100%) of the PAGA Payments to PAGA Members will be allocated as civil penalties. PAGA Payments will not be subject to payroll taxes or withholdings, and such amounts will be reported on an IRS Form 1099.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Participating Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Participating Class Member.

Settlement Checks – Settlement payments issued by the Settlement Administrator to Participating Class Members and PAGA Members must be cashed within One Hundred Twenty (120) calendar days of issuance. If a Participating Class Member or PAGA Member fails to cash a check for his or her Individual Settlement Award within 120 calendar days after the check is issued, the check will be voided and the Settlement Administrator will pay the amount represented by the uncashed check to [CY PRES].

5. What payments am I eligible to receive under the Settlement?

Based on CEI’s records, your number of compensable workweeks is [#] (i.e., the total number of workweeks that you worked as an hourly non-exempt employee in California during the time period of July 27, 2016 through [DATE]), and your estimated settlement payments are as follows:

- Potential Class Action Settlement Payment – [\$]
- PAGA Action Settlement Payment – [\$]

If you believe that you worked more or less workweeks as an hourly non-exempt employee in California during the period of July 27, 2016 through [DATE] and you wish to dispute your workweek calculations, you must contract the Settlement Administrator by [DEADLINE] and provide the Settlement Administrator all evidence to support your contention that your total workweek calculation is incorrect. The Settlement Administrator will make the final determination with respect to any dispute workweek calculations.

6. What are my options regarding participating in the Settlement?

You generally have two options under this Settlement. You may: (1) participate fully in the Settlement and be eligible to receive an Individual Settlement Award (if eligible) and PAGA Payment (if eligible); or (2) exclude yourself from (i.e., opt out of) the Settlement of the Potential Class Action and only be eligible to receive a payment for the resolution of the PAGA claims in the PAGA Action.

OPTION 1 – Fully Participate in the Settlement. If you wish to fully participate in the Settlement and receive all the payments that you are potentially able to receive under the Settlement, you do not need to do anything further. You will be represented at no cost by Class Counsel, and, if the Court grants final approval of the Settlement, the Settlement Administrator will distribute your eligible settlement payments to you, and you will be subject to the Judgments entered in the Actions, including the release of claims in the Settlement.

Objecting to the Settlement: If you choose Option 1 but believe the Settlement is not fair, reasonable or adequate in any way, you may participate in the Settlement while also objecting to it. To object, you may mail a written statement of objection (“Notice of Objection”) to the Settlement Administrator. The Notice of Objection shall (1) contain your full name, (2) contain your signature or the signature of your legal representative, (3) state the grounds for the objection, and (4) be mailed to the Settlement Administrator at

the following address, postmarked no later than [Response Deadline]: *Wittbecker v. Cupertino Electric, Inc. Settlement*, P.O. Box [redacted], [City], [State] [Zip]. You may also hire an attorney at your own expense to represent you in your objection, and may state your objection during the Final Approval Hearing (discussed below). You cannot object to the Settlement if you request exclusion from the Settlement of the Potential Class Action (*i.e.*, Option 2). **Please note that even if you submit an objection, you will be bound by the Settlement, including its release of claims, unless the Settlement is not finally approved by the Court.**

OPTION 2 – Opt Out of the Settlement. You have the option to request to be excluded from the Settlement with respect to all claims other than the PAGA claims in the Actions (for which there is no exclusion procedure). To request to be excluded from the Settlement of the non-PAGA claims, you must mail a written request for exclusion to the Settlement Administrator at the following address, postmarked no later than [Response Deadline]: *Wittbecker v. Cupertino Electric, Inc. Settlement*, P.O. Box [redacted], [City], [State] [Zip]. The written request for exclusion must contain the following information for verification purposes: (1) your full name; (2) your address; (3) your telephone number; (4) the last four digits of your Social Security number; (5) a clear statement that you wish to be excluded from the Settlement; and (6) your signature. The signed written request for exclusion must also be submitted to the Settlement Administrator by [DATE]. If you do not timely submit a completed and signed written request for exclusion, your request to be excluded from the Settlement will be rejected, you will remain in the Settlement, and you will be bound by the Judgment and release of claims in the Settlement. If you timely complete and submit a signed written request for exclusion, you will have no further role in the Actions, and you will not be entitled to any benefit as a result of the Settlement (other than a potential payment for the resolution of the PAGA claims) and will not be permitted to assert an objection to the Settlement.

7. What claims are being released by the proposed Settlement?

The Potential Class Action Release – Upon the Effective Date, Potential Class Members who participate in the Settlement (*i.e.*, individuals who do not validly opt out of the Settlement) will be deemed to have released and discharged CEI and its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, owners, members, officers, directors, employees, agents, attorneys, insurers, successors and assigns, counsel of record in the Actions, and any individual or entity that could be liable for any of the claims released through the Settlement (collectively, “Released Parties”) from all claims under state, federal, or local law, whether statutory or based in common law, arising out of the claims expressly pleaded in the Actions and all other claims that could have been pleaded based on the facts pleaded in the Actions, including but not limited to (1) failure to pay wages owed, including minimum and overtime wages; (2) failure to pay vacation wages; (3) failure to provide compliant meal and rest periods and associated meal and rest period premiums; (4) failure to reimburse business expenses; (5) failure to pay all wages due during employment and to discharged employees; (6) failure to provide accurate wage statements; (7) unfair competition under Business and Professions Code section 17200 based on the alleged Labor Code violations; and (8) alleged violation of the IWC Wage Orders based on the claims alleged.

The PAGA Action Release – Upon the Effective Date of the Settlement, the State of California and PAGA Members will be deemed to have released and discharged CEI and the Released Parties from any and all claims for civil penalties, attorneys’ fees, costs, and/or any other relief under PAGA arising out of the Labor Code claims and allegations expressly pleaded in the PAGA Notices and the Actions, and all other Labor Code claims that could have been asserted based on the facts and allegations pleaded in the PAGA Notices and the Actions, including but not limited to (1) failure to pay wages owed, including minimum and overtime wages; (2) failure to pay vacation wages; (3) failure to provide compliant meal and rest periods and associated meal and rest period premiums; (4) failure to reimburse business expenses; (5) failure to pay all wages due during employment and to discharged employees; and (6) failure to provide accurate wage statements.

8. What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s request for attorneys’ fees and costs, the enhancement payment to Wittbecker, the settlement administration costs, and the PAGA penalties on [DATE] at [TIME] in Department 19 of the Santa Clara Superior Court Old Courthouse, located at 161 N. First St., San Jose, California 95113. The

Final Approval Hearing may be continued without further notice to individuals eligible to participate in the Settlement. You are not required to attend the Final Approval Hearing, but you may do so at your own expense.

9. Who are the lawyers in the cases?

On [PRELIMINARY APPROVAL DATE], the Court granted preliminary approval of the Settlement. At that time, the Court also preliminarily approved the law firm of Setareh Law Group to serve as counsel for Wittbecker and the individuals eligible to participate in the Settlement (“Class Counsel”). Class Counsel’s contact information is as follows:

SETAREH LAW GROUP
Shaun Setareh
Thomas Segal
Farrah Grant
420 N. Camden Drive, Suite 100
Beverly Hills, California 90210
Telephone: 310-888-7771
Facsimile: 310-888-0109
shaun@setarehlaw.com
thomas@setarehlaw.com
farrah@setarehlaw.com

CEI is represented by Jackson Lewis P.C. in the Actions:

JACKSON LEWIS P.C.
Mia Farber
Scott Jang
Isabella Shin
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017

10. How can I get additional information?

This Notice summarizes the Actions and the basic terms of the Settlement. More details are contained in the detailed Settlement Agreement that is on file with the Court. The pleadings and other records in this litigation, including a complete copy of the Settlement Agreement, may be examined during regular court hours at the Records Department of the Clerk for the Superior Court of the County of Santa Clara. The court’s website may be found at www.santaclara.courts.ca.

For more information, you may also call the Settlement Administrator toll-free at [TELEPHONE NUMBER] or view the Settlement Administrator’s website at [WEBSITE]. You should review the court docket or the information provided on [WEBSITE] to confirm any date or time changes for the Final Approval Hearing and view important documents. The date of the Final Approval Hearing may change without further notice. Check the Settlement Administrator’s website or the Court’s docket to confirm that the date has not changed.

Any questions regarding this Notice may also be directed to Class Counsel, whose contact information is provided above.

11. What should I do if my address changes?

If you need to update your contact information, please promptly contact the Settlement Administrator toll-free at [Telephone Number]. This will ensure that you receive further notices about the Settlement and that you receive your Individual Settlement Award if the Settlement is approved by the Court.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

EXHIBIT 3

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Thomas Segal (SBN 222791)
thomas@setarehlaw.com
3 Farrah Grant (SBN 293898)
farrah@setarehlaw.com
4 SETAREH LAW GROUP
420 North Camden Drive, Suite 100
5 Beverly Hills, California 90210
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff
ROY WITTBECKER

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA

12 ROY WITTBECKER, on behalf of himself,
13 and all others similarly situated, and the
14 general public,

15 *Plaintiff,*

16 vs.

17 CUPERTINO ELECTRIC, INC., a Delaware
18 corporation; and DOES 1 through 50,
19 inclusive,

20 *Defendants.*

Case No. 20CV368613 (CLASS)
Case No. 20CV371987 (PAGA)

Assigned for All Purposes to the Honorable
Theodore C. Zayner, Department 19

**DECLARATION OF JOHN LOGAN ON
BEHALF OF PROPOSED CY PRES
RECIPIENT SAN FRANCISCO STATE
UNIVERSITY**

Class Action Complaint Filed: 07/27/2020
PAGA Complaint Filed: 10/23/2020

1 I, John Logan, declare as follows:

- 2 1. I am the Director of the Labor and Employment Studies program at San Francisco State
3 University and a full professor in the College of Business. I have personal knowledge of the facts
4 stated herein and could testify about them if called upon to do so.
- 5 2. I submit this declaration to support the designation of the Labor Dispute Department Of San
6 Francisco State University as a Cy Pres recipient in the Roy Wittbecker v. Cupertino Electric,
7 Inc., Santa Clara County Superior Court, Case No. 20CV368613 (Consolidated Case No.
8 20CV371987). The Labor and Employment Studies Department Of San Francisco State
9 University (hereinafter “LES”) is an ideal candidate to receive unclaimed or other class action or
10 collective action fund. San Francisco State University is an urban, public university that serves,
11 overwhelmingly, first-generation, working-class students of color. It is a designated “Hispanic-
12 Serving Institution” and has earned the prestigious Seal of Excelencia from the Excelencia in
13 Education. Likewise, the Labor and Employment Studies program serves predominantly first-
14 generation, working-class students of color. We teach courses in Labor and Employment Law,
15 Dispute Resolution, “Know Your Work Rights,” Labor History, Labor and Public Policy,
16 Diversity in the Workplace, Labor and Employment in California, Gender at Work and many
17 other topics. Our students frequently obtain employment at labor organization, government
18 agencies and community organizations that deal with issues such as wage theft, discrimination in
19 the workplace, labor and employment law enforcement, public policy, and unionization and
20 collective bargaining.
- 21 3. Since I was appointed director of the program in 2010, the Labor and Employment Studies
22 program has taught more than 20,000 students at San Francisco State University. Most of these
23 students – who come from a wide range of academic backgrounds –have completed our highly
24 popular introductory labor and employment law course, “Know Your Work Rights,” which
25 covers issues such as wage and hour law, wage theft, discrimination in the workplace, dispute
26 resolution, and whistleblower rights. Prior to taking the courses such as this, most of the students
27 had little or no knowledge of these key topics yet overwhelming they and their family members
28 work in sectors of the economy (food services, retail, hospitality, etc.) where issues such as wage

1 theft and discrimination are endemic. Forty years ago, students may have learned about these
2 issues from getting a job in a unionized workplace after graduation. Today, our students often
3 learn about these critical issues by taking classes like ours– or they do not ever learn about them.

- 4 4. Our students who major in Labor and Employment Studies have gone on to work at a wide
5 variety of organizations dealing with labor and workplace issues, including wage theft and
6 dispute resolution. For example, recent SFSU Labor Studies graduates now work as Wage and
7 Hour inspectors for the U.S. Department of Labor, Labor Compliance Officers for the Northern
8 California Carpenters Council and International Brotherhood of Electrical Workers, and union
9 reps, organizers or researchers for the Hotel and Restaurant Workers union Local 2 (San
10 Francisco and East Bay) and the International Federation of Professional and Technical
11 Engineers Local 21 (San Francisco and East Bay), Young Workers United-San Francisco, San
12 Francisco Jobs with Justice, AFSCME Local 3299, SEIU Local 1021, Teamsters Local 315
13 (Martinez), United Food and Commercial Workers Local 5 (Northern California), Office of
14 Labor Standards Enforcement–City and County of San Francisco, Washington Education
15 Association and many others. In their day-to-day work duties, many of these former students
16 deal with issues of wage theft – often involving low wage workers in Northern California – and
17 dispute resolution, topics they first learned about while students of the Labor Studies program at
18 San Francisco State University. Thus, they are putting to work their education and training in
19 order to help other (often low wage) workers in California who may be vulnerable to issues of
20 wage theft, workplace discrimination and so on.
- 21 5. If we were a successful candidate, Cy pres funding would have a tremendous positive impact on
22 our activities: it would allow us to expand our teaching on course like “Know Your Work
23 Rights,” “Labor and Employment Law,” and “California Labor History and Labor in California
24 Today.” Thus, more San Francisco State University students would be exposed to these topics
25 and would graduate with an understanding of basic workplace rights, including issues such as
26 wage theft, dispute resolution, and discrimination in the workplace. We would also use the funds
27 to expand our labor internship program, which allows Labor and Employment Studies students at
28 San Francisco State to work with organizations such as unions, community organizations and

1 local government agencies that deal with issues of wage and hour law, wage theft, dispute
2 resolution, and workplace discrimination as part of their day-to-day duties. These internships
3 provide our students with invaluable practical experience, transferable research, and problem-
4 solving skills and (almost always) leaves them with a strong desire to pursue this kind of work
5 after graduation. While internships exist at some of these places, they are often not accompanied
6 by a stipend. With nearly 70% of our students eligible for Pell grants, our students usually hold
7 one or two jobs on the side to make ends meet. An internship with no stipend is not a financially
8 feasible option for them since many of them are housing and food insecure. Yet, the internship
9 program is often among the most valuable experience that our students gain while at university.
10 It can be a life-changing experience for many students. The internship program serves as a
11 pipeline for our first-gen, working-class students to gain well-paying jobs doing socially useful
12 work in the labor and employment field after they graduate. The Cy pres funding will allow us to
13 both coach and guide our students to take on internships and allow us to provide a stipend to
14 them thereby making this critical experience a viable option for them.

- 15 6. San Francisco State University's finance, management and operations systems allow us to
16 provide the Court with proper accounting, at intervals the Court deems appropriate, to verify all
17 awarded Cy pres funds are properly used.
- 18 7. We appreciate your consideration of our organization for this award.
- 19
20

21 I declare under penalty of perjury under the law of the State of California that the foregoing is
22 true and correct. Executed this 18th day of March 2025 in the county of San Francisco.

23
24

25 By: John Logan
26 John Logan, Director and Professor of Labor & Employment Studies
27 San Francisco State University
28