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6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SACRAMENTO**

10
11 CHAZ PEREZ, individually and on behalf of
all other similarly situated employees,

12 Plaintiff,

13 vs.

14
15 TOO INFINITY MANAGEMENT, LLC, a
California Limited Liability Company;
16 HUMBLE ROOT INTERNATIONAL, INC.,
a California Corporation; JAVIER
17 HERNANDEZ, an individual; CHRIS THAO,
an individual; JUSTIN JACINTO, an
18 individual and DOES 1 to 100, inclusive,

19 Defendants.
20
21
22
23

Case No. 34-2020-00285276

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS CLASS
CLAIMS WITHOUT PREJUDICE**

Reservation Number: 2587212

Date: October 6, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: September 15, 2020

FAC Filed: May 18, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on October 6, 2021, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 54 of the above-entitled Court, Plaintiff Chaz Perez ("Plaintiff") will
4 move for entry of an Order for the following:

- 5 1. Finding that Plaintiff exhausted administrative remedies under the Private Attorneys General
6 Act ("PAGA") and, as such, was authorized to enter into this settlement on behalf of the
7 Labor and Workforce Development Agency;
- 8 2. Approving the \$90,000 PAGA Settlement, which is incorporated by reference as if stated
9 here in full;
- 10 3. Approving the application for payment to Plaintiff's Counsel of reasonable costs in an
11 amount not to exceed \$6,301.15;
- 12 4. Approving an enhancement payment of \$10,000 to Plaintiff Chaz Perez;
- 13 5. Approving the appointment of Simpluris, Inc. as the Claims Administrator and for payment
14 to Simpluris, Inc., for administering said settlement in an amount not to exceed \$3,500;
- 15 6. Approving the application for payment to Plaintiff's Counsel of reasonable attorneys' fees in
16 the amount of \$31,500 (35% of the Gross Settlement Amount);
- 17 7. Approving as to form and content the proposed Notice of Settlement, which provides
18 individuals within the scope of the settlement information regarding the settlement;
- 19 8. Approving the proposed procedures to notify, and deliver payment to, the individuals within
20 the scope of the settlement by first class mail;
- 21 9. Directing Defendants to report employment information, including social security numbers,
22 to the claims administrator to administer the settlement proceeds;
- 23 10. Directing that any residue from settlement checks that were not cashed by the check cashing
24 deadline be donated to the Center for Workers Rights under the doctrine of *cy pres*;
- 25 11. Dismissing the class allegations and class claims without prejudice; and
- 26 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed
27 herewith and incorporated by reference.

1 This Motion is being made pursuant to California Labor Code section 2699(1)(2) and California
2 Rules of Court 3.770 on the grounds that the proposed PAGA settlement is fair, reasonable, and
3 adequate and furthers the purpose behind the asserted California Labor Code statutes in deterring non-
4 compliance. As a result, the PAGA settlement should be approved by the Court. This motion will be
5 based on the notice of motion, memorandum of points and authorities, the Declaration of Galen T.
6 Shimoda, the Declaration of Chaz Perez, exhibits, the record and files of this case, and any further oral
7 or documentary evidence introduced at the hearing of this motion.

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

15 Dated: September 3, 2021

16 **Shimoda Law Corp.**

17 By: 
18 Galen T. Shimoda
19 Justin P. Rodriguez
20 Brittany V. Berzin
21 Jessica L. Hart
22 Attorneys for Plaintiff

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

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

CHAZ PEREZ, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

TOO INFINITY MANAGEMENT, LLC, a
California Limited Liability Company;
HUMBLE ROOT INTERNATIONAL, INC.,
a California Corporation; JAVIER
HERNANDEZ, an individual; CHRIS THAO,
an individual; JUSTIN JACINTO, an
individual and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00285276

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS CLASS
CLAIMS WITHOUT PREJUDICE**

Reservation Number: 2587212

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Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: September 15, 2020

FAC Filed: May 18, 2021

Trial Date: None Set

1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 This Motion is brought seeking approval of a Private Attorneys General Act (“PAGA”)
3 settlement in the gross amount of \$90,000.¹ *See generally* Exhibit A (Proposed PAGA Settlement).
4 Plaintiff Chaz Perez (“Plaintiff”) brought PAGA claims on behalf of the Labor and Workforce
5 Development Agency (“LWDA”) and Aggrieved Employees employed by Humble Root International,
6 Inc., Javier Hernandez, Chris Thao, and Justin Jacinto (“Defendants”). Plaintiff worked for Defendants
7 in California from November 2019 to March 2020 and was subject to all the same policies and practices
8 that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative
9 Complaint); Declaration of Chaz Perez (“Decl. Perez”) ¶ 2. Plaintiff has alleged that Defendants
10 violated Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (failure to pay overtime wages); violated
11 Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (failure to pay minimum wages); violated Labor
12 Code §§ 226.7, 512 and Wage Order No. 7, §§ 11(A) and 11(B) (failure to provide meal periods or pay
13 premiums in lieu thereof); violated Labor Code § 226.7 and Wage Order No. 7, § 12(A) (failure to
14 provide rest periods or pay premiums in lieu thereof); violation of Labor Code §§ 226, 226.3 (failure to
15 provide accurate wage statements); violated Labor Code §§ 201-203, 256 (failure to pay final wages);
16 violated Labor Code § 2802 (failure to pay reimbursements for expenses); violated Labor Code §§ 558,
17 558.1 (provisions regulating hours and days of work in any Industrial Welfare Commission Order);
18 violated Labor Code §§ 226.3, 1174 (failure to maintain accurate records); and violated Labor Code §§
19 246, 246.5, 248.5 (failure to provide paid sick leave). *See generally* Exhibit B. These violations
20 primarily stem from Plaintiff’s allegations that Defendants violated California law by 1) failing to pay
21 minimum wages; 2) failing to provide meal periods or premiums in lieu thereof; 3) failing to pay final
22 wages; 4) failing to provide accurate wage statements; 5) violating provisions regulating hours and days
23 of work in any Industrial Welfare Commission order; 6) failing to maintain accurate time records; 7)
24 failing to pay overtime wages; 8) failing to provide rest periods or premiums in lieu thereof; 9) failing to
25 reimburse expenses; and 10) failing to provide paid sick leave. *See id.* Plaintiff’s PAGA claims are
26 based on these violations. *See* Exhibit B

27 _____
28 ¹ As set forth in more detail below and in the declaration of Galen T. Shimoda, in determining the adequacy of the PAGA settlement, Plaintiff is seeking the dismissal of the class claims and allegations without prejudice in connection with the approval of the PAGA settlement.

1 Defendants have denied all of Plaintiff's allegations and any liability or wrongdoing of any kind.
2 *See* Declaration of Galen T. Shimoda ("Decl. Shimoda"), ¶ 4. However, subject to approval by the
3 Court, the parties have been able to compromise and settle the PAGA claims for monetary compensation
4 as a result of extensive investigations, informal document and data exchanges, and extended
5 negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Similarly, this extensive
6 investigation revealed that due to serious financial constraints and risks, it is appropriate to dismiss the
7 class claims without prejudice. *See* Decl. Shimoda, ¶¶ 5, 20.

8 Plaintiff's counsel believes the proposed settlement is fair, reasonable, and adequate based on the
9 investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues
10 in this case. *See* Decl. Shimoda, ¶¶ 5-7, 8-9. The prospect of a potential adverse summary judgment
11 ruling, difficulties of complex litigation, Defendants' possible good faith defense to wage statement and
12 waiting time penalty claims, the lengthy and uncertain process of establishing specific violations as to
13 each individual within the scope of the PAGA claims for each pay period, the Court's discretion to cut
14 PAGA penalties, Defendant's financial position and risks associated therewith, and various possible
15 delays and appeals were carefully considered by Plaintiff and Plaintiff's counsel in agreeing to the
16 proposed PAGA settlement. *See id.* at ¶ 5.

17 It is well within the discretion of this Court to approve of the proposed Agreement. Accordingly,
18 Plaintiff requests that the Court: (1) make a finding that Plaintiff has exhausted all administrative
19 remedies and is authorized to enter into the proposed PAGA settlement on behalf of the LWDA; (2)
20 approve the proposed Agreement; (3) set dates for and direct distribution of payment and the Notice of
21 Settlement (Exhibit E) to Aggrieved Employees affected by the settlement as set forth in the Agreement;
22 (4) dismiss the class claims and allegations without prejudice; and (5) adopt the implementation
23 schedule contained in the proposed order.

24 **II. PROCEDURAL AND LITIGATION HISTORY**

25 Plaintiff filed this lawsuit on September 15, 2020. On July 2, 2020, Plaintiff gave written notice
26 to the LWDA and Defendants providing facts and the legal basis for all claims asserted in the Complaint
27 and the claims that are being resolved under the Agreement. *See* Exhibit C (Plaintiff's Ltr. to the Labor
28 and Workforce Development Agency). Plaintiff also submitted the \$75.00 filing fee. *See* Decl.

Shimoda ¶ 3. The July 2, 2020, notice was also sent via certified mail to Defendants on the same day. *See* Exhibit C. The LWDA did not provide any response to Plaintiff's notice correspondence within the statutorily required time frame and, as a result, Plaintiff became authorized to act as a Private Attorney General for the asserted claims. *See* Decl. Shimoda ¶ 2. Plaintiff uploaded a copy of the filed Complaint to the LWDA on June 22, 2021. *See* Decl. Shimoda ¶ 2. No trial date has been set in this matter. *See id.*

III. INVESTIGATION AND DISCOVERY CONDUCTED

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

IV. NEGOTIATION AND PROPOSED SETTLEMENT

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

The final settlement occurred only after extended, and sometimes contentious, arm's length negotiations. Over the course of approximately fourteen (14) months, Plaintiff has been investigating the claims and discussing with Defendants' counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-9. The parties exchanged substantial amounts of information and legal analysis regarding the asserted claims. *See id.* Then, only after nearly fourteen (14) months of litigation and negotiation, which included a full day mediation with David Perrault, the parties were able to reach a

1 mutually agreeable settlement. *See id.* at ¶ 7. In light of the claims and defenses at issue, the parties
2 agreed to a Gross Settlement Amount of \$90,000. *See* Exhibit A.

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

4 Under the settlement agreement, Defendants have agreed to the following:

5 1. The scope of individuals falling within the PAGA settlement would include all of
6 Defendants' hourly non-exempt employees who have or continue to work for Defendants in California
7 from July 2, 2019, to the date a signed order approving the Agreement has been filed with the court. *See*
8 Exhibit A, ¶¶ 1.2, 1.18. The estimated number of Aggrieved Employees is 61.

9 2. Pay the Gross Settlement Amount of \$90,000 to resolve and release the PAGA claims
10 alleged in the Complaint. *See id.* at ¶¶ 1.13, 1.25, 1.26, 5.1, and 6.1.

11 3. The parties agree that up to \$10,000 for Plaintiff Chaz Perez will be paid as an
12 Enhancement Payment. This amount will be in addition to any amount Plaintiff may be entitled to under
13 the terms of the Agreement. *See id.* at ¶ 5.3.

14 4. The parties agree the cost of administering this settlement shall be paid from the Gross
15 Settlement Amount. Subject to Court approval, the parties selected Simpluris, Inc. to act as the
16 settlement administrator. The fees to administer the class shall not exceed \$3,500. Simpluris, Inc. has
17 provided a quote to administer the settlement of \$3,444.35. *See id.* at ¶ 5.4; Exhibit D (Simpluris, Inc.
18 Quote). The difference any actual administration costs and the allocated \$3,500 shall be added to the
19 Net Settlement Amount. *See* Exhibit A, ¶ 5.4.

20 5. The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount
21 (\$31,500) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendants
22 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
23 Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation costs as approved
24 by the Court in an amount not to exceed \$10,000. *See id.* At the time this motion was filed, the
25 estimated total costs incurred and that will be incurred in the future as a result of the litigation and
26 implementing the terms of the PAGA Settlement is \$6,301.15. *See* Decl. Shimoda ¶ 16; Exhibit G
27 (Plaintiff's Itemized Costs). Any difference between any actual costs and the allocated \$10,000 will be
28 added to the Net Settlement Amount. *See* Exhibit A, ¶ 5.2.

1 6. Any Claims Administrator Costs, amounts paid for attorneys' fees and costs, Plaintiff's
2 Enhancement Payment, and payments to the LWDA will be paid from the Gross Settlement Amount,
3 not in addition to the Gross Settlement Amount. *See id.* at ¶¶ 1.15, 5.1-5.4, 5.11.

4 7. The settlement administrator will perform searches to locate Aggrieved Employees based
5 on the last contact information in Defendants' possession. *See id.* at ¶¶ 7.2, 7.5-7.7. The searches will
6 include reference to the U.S. Postal Service's National Change of Address Database and, for any notice
7 returned as undeliverable, skip tracing using the individual's social security number and other pertinent
8 identifying information. *See id.* In addition to their settlement share, Aggrieved Employees will receive
9 a notice that provides them with information concerning all material terms of the settlement. *See id.* at ¶
10 7.5; Exhibit E.

11 8. For any portion of the Net Settlement Sum allocated to Aggrieved Employees that is not
12 claimed by them by cashing their respective settlement checks within 120 days, the remaining amount
13 shall be paid to the Center for Workers Rights under the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.5. No
14 portion of the settlement will revert to Defendants for any reason. *See id.*

15 **c. Allocation of Settlement Funds**

16 The Net Settlement Amount will be determined under the terms of the PAGA settlement. *See*
17 Exhibit A, ¶ 1.15. The Net Settlement Amount will equal the total Gross Settlement Amount (\$90,000)
18 less Plaintiff's attorneys' fees and costs, Plaintiff's Enhancement Payment, and Claims Administrator
19 Costs. *See id.* After the Court approves attorneys' fees and costs, Plaintiff's Enhancement Payment,
20 and Claims Administrator Costs, and the Net Settlement Amount has been established, that Net
21 Settlement Amount shall be divided between the PAGA Payment and payment to Aggrieved Employees.
22 The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount pursuant to Labor Code
23 section 2699(i). 25% of the Net Settlement Amount will be paid to Aggrieved Employees pursuant to
24 Labor Code section 2699(i). Each individual Aggrieved Employees' Claim Amount shall be determined
25 by taking the Qualifying Pay Periods for the individual Aggrieved Employee and dividing that by the
26 Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction by the 25% share of
27 the Net Settlement Amount. Payment to Aggrieved Employees of their Claim Amount will not require
28 the submission of any claim form. *See* Exhibit A, ¶¶ 1.2, 1.15, 5.10.

1 **V. ARGUMENT**

2 **a. PAGA Settlements Are Subject To Court Review and Approval Under The California**
3 **Labor Code**

4 A PAGA settlement is not effective unless the statutory requirements for becoming an authorized
5 representative of the LWDA have been complied with and the Court has reviewed and approved the
6 terms of the settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699.3(a), (c). The Court necessarily has
7 broad discretion in making the decision to approve or reject a settlement for civil penalties as the
8 statutory scheme authorizes the Court to determine whether, in certain circumstances, penalties should
9 be assessed and, if so assessed, the appropriate amount of penalties based on the facts and circumstances
10 of the particular case. *See id.* at § 2699(e)(1)-(2). Although the PAGA does not set forth the particular
11 standards against which a PAGA settlement should be evaluated, the LWDA has provided guidance for
12 approval that mirrors the standards for evaluating class action settlements. *See, e.g., Salazar v. Sysco*
13 *Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the
14 LWDA’s guidance, that approval of PAGA settlements may be had where the statutory requirements of
15 the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and adequate).
16 The established standards for evaluating whether class action settlements are fair, reasonable, and
17 adequate provide a familiar, useful framework for the Court to evaluate PAGA settlements and have
18 been adopted by several courts. *See id.; Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D.
19 Cal. 2017) (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d
20 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9
21 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v.*
22 *Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*,
23 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018
24 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

25 In making the determination whether a settlement taken as a whole is fair, reasonable, and
26 adequate, the Court should be careful to still give “proper deference to the private consensual decision of
27 the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
28 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned

1 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the
2 negotiating parties” *Hanlon*, 150 F.3d at 1027. The law favors settlement of lawsuits, particularly
3 complex litigation cases where substantial resources can be conserved by avoiding the time, expense,
4 and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In*
5 *re Synacor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32
6 Cal.App.4th 344, 382 (1995).

7 **b. Plaintiff has Met All Statutory Requirements For Proceeding With PAGA Claims**

8 Prior to commencing a lawsuit under PAGA, an aggrieved employee must give written notice of
9 the facts, theories, and statutes supporting the violations to the LWDA by online filing and by certified
10 mail to the employer as well as pay a filing fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B),
11 (c)(1)(A)-(B). An “‘aggrieved employee’ means any person who was employed by the alleged violator
12 and against whom one or more of the alleged violations was committed.” *id.* at § 2699(c). If the
13 LWDA does not provide notice of its intent to investigate the violation of statutes identified in Labor
14 Code section 2699.5 within 65 calendar days of the notice, the aggrieved employee may commence a
15 civil action. *See id.* at § 2699.3(a)(2)(A). For alleged violations of Labor Code statutes not enumerated
16 in Labor Code section 2699.5, an aggrieved employee may commence a civil action if the employer has
17 not cured the alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A). An
18 aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the
19 same time the agreement is submitted to Court. *See id.* at § 2699(l)(2).

20 As set forth above, Plaintiff complied with all statutory requirements to commence a civil action.
21 *See* Decl. Shimoda ¶ 2; Exhibit C. The notice letter to the LWDA sets forth all claims and theories of
22 liability stated in the Complaint as well as supporting facts. *See* Exhibit C. Plaintiff also paid the
23 \$75.00 filing fee. *See* Decl. Shimoda ¶ 2. Plaintiff became authorized to commence a civil action on all
24 claims asserted in the notice as of July 2, 2020. Plaintiff’s initial Complaint and First Amended
25 Complaint were appropriately filed after this date on September 15, 2020, and May 18, 2021. *See*
26 Exhibit B. Furthermore, Plaintiff has provided a copy of the PAGA Settlement *and* the entire motion for
27 approval of the PAGA settlement to the LWDA for its consideration at the same time this motion was
28 filed. *See* Decl. Shimoda ¶ 18; Exhibit F (Proof of Submission of Proposed Settlement Agreement to

1 LWDA). As a result, Plaintiff has met all procedural statutory requirements for commencing and
2 settling a PAGA action.

3 **c. The Terms of The Settlement Are Fair, Reasonable, and Adequate**

4 To make its determination that the PAGA settlement is fair, reasonable, and adequate, the Court
5 may consider several factors, including:

6 the strength of the Plaintiff's case, the risk, expense, complexity and likely
7 duration of further litigation, the risk of maintaining class action status
8 through trial, the amount offered in settlement, the extent of discovery
completed and the stage of the proceedings, and the experience and views
of counsel

9 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Juarez*, 2017 U.S. Dist. LEXIS 137205,
10 *5 n.4; *Ramirez*, 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla*, 2017 U.S. Dist. LEXIS 41655, *7, n.4;
11 *Smith*, 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886, *6. However, this
12 Court should begin its analysis with a presumption that the proposed settlement is fair. "A presumption
13 of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation
14 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
15 in similar litigation" *Dunk*, 48 Cal.App.4th at 1802.

16 **i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length Negotiations**
17 **Between the Parties**

18 Settlement in this case was reached only after litigation and extensive arm's length negotiations
19 lasting nearly fourteen (14) months, which included a full day mediation with David Perrault. *See* Decl.
20 Shimoda, ¶¶ 5-9. At all times, the negotiations were adversarial and contentious, although still
21 professional in nature. *See id.* Further, while Plaintiff contends he would ultimately prevail on the
22 claims and the issue of manageability, this is not a certainty and there is substantial risk in proceeding to
23 further litigation. *See id.* at ¶¶ 5-9.

24 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
25 **Information to Enter into an Informed and Reasonable Settlement**

26 The parties were in possession of all necessary information during the negotiations. The parties
27 engaged in substantial informal discovery and exchange of documents, including a representative
28 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the

entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the
PAGA claims and helped thoroughly vet the extent of Plaintiff's claims against Defendants and create
an accurate damages model. *See* Decl. Shimoda, ¶¶ 5-9. Plaintiff was in possession of this information
prior to calculating the potential damages in this case. *See id.* As a result, Plaintiff was able to make a
reasonable estimation of Defendants' potential liability. *See id.* For these reasons, the settlement now
before the Court was reached at a stage where "the parties certainly have a clear view of the strengths
and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp.
610, 617 (N.D. Cal. 1979).

iii. Plaintiff's Counsel is Experienced in Similar Litigation

Plaintiff's counsel has considerable experience in class actions and wage and hour litigation.
Plaintiff's counsel has brought and is currently bringing several wage and hour class and/or PAGA
actions. Thus, Plaintiff's counsel is qualified to evaluate the PAGA claims, the value of settlement
versus moving forward with litigation, and viability of possible affirmative defenses. *See* Decl.
Shimoda, ¶¶ 11-15. Plaintiff's counsel believes that the settlement is fair, reasonable, and adequate in
light of the risks associated with the merits of Plaintiff's claims, the uncertainties of complex litigation,
the Court's discretion to lower the amount of penalties ultimately awarded, and the secured benefit to
the Aggrieved Employees and LWDA promoting compliance with the Labor Code. *See id.* at ¶¶ 5-9.

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

A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
the records and facts of this case, Plaintiff has secured a gross recovery of approximately 42% to 10.8%
of the total available civil penalties, and a net recovery of approximately 16.3% to 4.2% of the total
available civil penalties. *See id.* at ¶¶ 8-9. This settlement is a reasonable compromise of the PAGA
claims, and exceeds approved settlement ranges in other cases comparing either absolute numbers or as
a percentage of total available damages in a class action context. *See Davis v. Cox Commc'ns
California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000
PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5
(S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to

\$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Wershba*, 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice*, 688 F.2d at 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that the median percentage for recoveries in shareholder class action settlements averaged 2.2%-3% from 2000 through 2002).

v. The Proposed Settlement is a Reasonable Compromise of Claims

The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) required additional information be presented to the Court in representative action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010), clarified that *Kullar* does not require the parties to submit an illusory prediction of the outer reaches of exposure without taking into account the actual risks associated with the litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed on all the claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* court found the record before the trial court was sufficient, having included the number of class members, payroll data, declarations describing hours and overtime worked, as well as variances in duties and rest and meal period experience, and a companion action alleging less than \$5,000,000 in damages. This information constituted “an adequate basis from which to garner a

1 reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*.”
2 *Id.*

3 Plaintiff similarly relied upon payroll data and Aggrieved Employee data to determine the
4 realistic potential civil penalties at issue. *See* Decl. Shimoda ¶ 6. This analysis allowed Plaintiff to
5 determine the extent and frequency of potential violations on all claims as to all Aggrieved Employees.
6 *See* Decl. Shimoda ¶¶ 6-9. Ultimately, Plaintiff secured a percentage of the total demand for the PAGA
7 that is well within, and in fact exceeds, the range of what has been found to be sufficient in several other
8 cases. *See, supra*, Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at
9 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement
10 of \$11.7 million where the maximum range of damages was \$5,000 for each of the alleged 300,000
11 instances of unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total
12 demand and approximately \$800 per class member). This settlement represents a reasonable
13 compromise given the facts of the case, potential defenses, and potential likely recoverable damages.

14 **vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to**
15 **Aggrieved Employees and the LWDA Is Reasonable and Routinely Awarded by**
16 **Courts**

17 The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort
18 expended on behalf of Aggrieved Employees and the LWDA. Indeed, Courts routinely approve
19 enhancement payments to named representatives in representative litigation to compensate named
20 plaintiffs for the services they provide and the risks they incurred during the course of the class action
21 litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the
22 Court approved enhancement payments of \$300,000.00 to each named plaintiff in recognition of the
23 services they provided to the class by responding to discovery, participating in the mediation process,
24 and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see also Van Vranken v.*
25 *Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 enhancement
26 payment).

27 In this case, Plaintiff provided and explained documents, being available at all times to discuss
28 the case with Plaintiff's counsel. *See* Decl. Shimoda, ¶ 6; Decl. Perez, ¶ 5. Plaintiff spent a significant
amount of time pursuing this litigation for the benefit of Aggrieved Employees and the LWDA. *See id.*

1 Plaintiff brought this action knowing there would be a delay in any payment as the litigation
2 progressed, rather than proceeding on individual claims in front of the California Labor Commissioner.
3 *See id.* Payment of \$10,000 to Plaintiff is appropriate given the risk, assistance, and time required in
4 bringing this case and resolution of this case.

5 **vii. The Requested Attorneys' Fees as a Percentage of the Common Fund are**
6 **Reasonable and Customarily Approved by Courts**

7 California state and federal courts have recognized that when a litigant's efforts create or
8 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
9 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
10 444 U.S. 472, 478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than
11 . . . his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v. Hughes Air*
12 *West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *see*
13 *also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480,
14 506 (2016). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to
15 "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
16 bear the entire burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*,
17 129 F.3d 1026, 1027 (9th Cir. 1977). Courts have approved use of a percentage of the fund to calculate
18 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
19 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

20 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
21 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
22 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Grauly*, 886
23 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a represented
24 group has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement
25 recovered on his behalf." *Id.* at 271 (citations omitted). Although this litigation is under the PAGA and
26 not a class action, the basis for a common fund applies with equal force in this PAGA litigation. The
27 three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this case because there is a
28 sufficiently identifiable class of beneficiaries (*e.g.* Plaintiff, Aggrieved Employees recovering under the

1 settlement, and the LWDA), the benefits can be accurately traced to the settlement Plaintiff and his
2 counsel were able to negotiate on behalf of the beneficiaries, and the fee can be shifted with exactitude
3 to those benefiting as the fee request is a specific, lump-sum percentage of the common fund. As set
4 forth in the fee award examples provided below for the Court's reference, it is an accepted practice in
5 wage and hour litigation, which include PAGA settlements, to award attorneys' fees based on a
6 percentage of the common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003);
7 *Sanders v. City of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v.*
8 *Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004); *Rincon v. W. Coast Tomato Growers,*
9 *LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

10 Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of
11 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
12 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
13 generally approved as reasonable in wage and hour settlements below \$10 million:

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

20 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011); *see also In*
21 *re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming 33% of fund as fee in
22 securities case); *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (same). Both California
23 Courts and Federal District Courts regularly award fees within these ranges. *See Watson v. Raytheon*
24 *Company*, USDC Southern District, Case No. 3:10-cv-00634 (33-1/3% fee award); *Dirienzo v. Dunbar*
25 *Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745 (33-1/3% fee award); *Green, et al. v.*
26 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069 (33% fee award);
27 *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122 (33.3% fee award); *Chavez et*
28 *al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122 (33.3% fee award); *Willis et al.*

1 *v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695 (33% fee award); *Birch v.*
2 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
3 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
4 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
5 action settlement). To determine whether a percentage is reasonable, a Court may consider: (1) the
6 percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied
7 in other representative actions; (3) the quality of counsel; and (4) the size of the award. *See In re Ikon*
8 *Office Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000).

9 These factors support Plaintiff's request for reasonable attorneys' fees. The typical percentage
10 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
11 depending on the complexity of the case. In class action and PAGA litigation, the typical percentage
12 negotiated between parties ranges from thirty to forty percent (30% to 40%) based on the same factors.
13 Plaintiff's request of \$31,500 (35%) falls within these typical fee arrangements. *See Decl. Shimoda*, ¶
14 16. The size of the PAGA settlement also supports the fee request when compared to other PAGA
15 settlements that have been deemed to protect the public's interest. *See Davis*, 2017 U.S. Dist. LEXIS
16 63514, *1 (\$4,000 PAGA allocation); *Moore*, 2014 U.S. Dist. LEXIS 8358, *5 (\$2,500 PAGA
17 allocation); *Jack*, 2011 U.S. Dist. LEXIS 118764, *6 (\$3,000 PAGA allocation); *Singer*, 2010 U.S. Dist.
18 LEXIS 53416, *2 (\$3,000 PAGA allocation); *Hopson*, 2009 U.S. Dist. LEXIS 33900, *9 (approving
19 \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880,
20 *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though
21 PAGA exposure was calculated at \$53,600,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist.
22 LEXIS 160052, at *7 (E.D. Cal. 2012) (\$10,000 PAGA allocation). As a percentage of the total likely
23 recovery at trial, the settlement ranges up to a 42% recovery depending on the amount of discretion the
24 Court may have otherwise used to reduce awarded penalties at trial. *See Decl. Shimoda* ¶ 9. The size of
25 the recovery also speaks to the high quality of representation Plaintiff's counsel was able to effect in this
26 case. Furthermore, Plaintiff's counsel took this case on a contingency basis and has not received any
27 compensation for the work done in this case at all while shouldering the immense financial risk
28 attendant to complex civil litigation involving 61 Aggrieved Employees. *See id.* at ¶¶ 5, 16. For these

1 reasons, Plaintiff's request for fees in the amount of one-third of the common fund should be granted.

2 Plaintiff's counsel seek reimbursement of \$6,301.15 for the expenses they have incurred and will
3 continue to incur though carrying out the terms of this settlement. *See* Exhibit G. This is less than the
4 \$10,000 provided for in the settlement. These expenses include postage charges, photocopying and
5 printing expenses, mediation expenses, expert expenses, research and filing expenses, among other
6 expenses necessarily incurred to properly litigate this case. *See id.* For these reasons, Plaintiff's request
7 for reimbursement of litigation expenses should be granted.

8 **VI. CONCLUSION**

9 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
10 has met all statutory requirements to commence a PAGA civil action; approve the PAGA settlement,
11 including counsel's application for reasonable attorneys' fees and costs and request for Plaintiff's
12 Enhancement Payment; approve the notice and payment distribution procedures; and adopt the
13 implementation schedule identified in the proposed order, which is being filed concurrently herewith.

14
15
16 Dated: September 3 2021

Shimoda Law Corp.

17
18 By: 

19 Galen T. Shimoda
20 Justin P. Rodriguez
21 Brittany V. Berzin
22 Jessica L. Hart
23 Attorneys for Plaintiff
24
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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

CHAZ PEREZ, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

TOO INFINITY MANAGEMENT, LLC, a
California Limited Liability Company;
HUMBLE ROOT INTERNATIONAL, INC.,
a California Corporation; JAVIER
HERNANDEZ, an individual; CHRIS THAO,
an individual; JUSTIN JACINTO, an
individual and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00285276

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AND
DISMISS CLASS CLAIMS WITHOUT
PREJUDICE**

Reservation Number: 2587212

Date: October 6, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: September 15, 2020

FAC Filed: May 18, 2021

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed Private Attorneys General Act Settlement
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the Labor and Workforce Development Agency
D	Simpluris, Inc. Quote
E	Proposed Notice of Settlement
F	Proof of Submission to LWDA
G	Plaintiff's Itemized Costs

Dated: September 3, 2021

Shimoda Law Corp.

By: _____



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

EXHIBIT A

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10 Attorneys for HUMBLE ROOT INTERNATIONAL, INC., JAVIER HERNANDEZ, CHRIS THAO,
11 and JUSTIN JACINTO

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

14 CHAZ PEREZ, individually and on behalf of
15 all other similarly situated employees,

16 Plaintiff,

17 vs.

18 TOO INFINITY MANAGEMENT, LLC, a
19 California Limited Liability Company;
HUMBLE ROOT INTERNATIONAL, INC., a
20 California Corporation; JAVIER
21 HERNANDEZ, an individual; CHRIS THAO,
an individual; JUSTIN JACINTO, an
22 individual; and DOES 1 to 100, inclusive,

23 Defendants.

Case No.: 34-2020-00285276

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Filed: September 15, 2020

FAC Filed: May 18, 2021

Trial Date: None Set

1 This Private Attorneys General Act Settlement (“Agreement”) is made and entered into between
2 the Plaintiff Chaz Perez (“Plaintiff”), on behalf of himself, the Labor and Workforce Development
3 Agency, and Aggrieved Employees, and Defendants Humble Root International, Inc., Javier Hernandez,
4 Chris Thao, and Justin Jacinto (“Defendants”). This Agreement is subject to the terms and conditions set
5 forth below and approval of the Court.

6 **1. DEFINITIONS**

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

8 1.1 “Action” means the above stated lawsuit, *Perez v. Too Infinity Management, LLC, et al.*,
9 Sacramento County Superior Court, Case No. 34-2020-00285276, filed September 15, 2020.

10 1.2 “Aggrieved Employee(s)” means all of Defendants’ hourly, non-exempt employees who
11 have or continue to work for Defendants in California during the PAGA Claim Period. The estimated
12 number of Aggrieved Employees is 61.

13 1.3 “Claim Amount” means an individual Aggrieved Employees’ allocation of the Net
14 Settlement Amount, as defined in Section 1.15 and 5.7-5.9.

15 1.4 “Claims Administrator” means and refers to Simpluris, Inc., the third-party entity that will
16 administer the Agreement as outlined in Section 7.

17 1.5 “Claims Administrator Costs” means the fees and expenses reasonably incurred by the
18 Claims Administrator as a result of the procedures and processes expressly required by this Agreement,
19 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
20 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees
21 associated with preparing, issuing and mailing any and all notices and other correspondence to Aggrieved
22 Employees; all costs and fees associated with communicating with Aggrieved Employees, Plaintiff’s
23 Counsel, and Defendants’ Counsel; all costs and fees associated with computing, processing, reviewing,
24 and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax
25 withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any,
26 and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with
27 preparing any tax returns and any other filings required by any governmental taxing authority or agency;
28 all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the

1 course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the
2 Claims Administrator in connection with the execution of its duties under this Agreement.

3 1.6 “Complaint” means the operative Complaint on file in the Action with the Court.

4 1.7 “Court” means the Sacramento County Superior Court.

5 1.8 “Defendants” means Humble Root International, Inc., Javier Hernandez, Chris Thao, and
6 Justin Jacinto.

7 1.9 “Defendants’ Counsel” means Laura C. McHugh and Samantha J. Tanner of Duggan
8 McHugh Law Corporation.

9 1.10 “Enhancement Payment” means the amount approved by the Court to be paid to Plaintiff
10 in recognition of the time and effort he expended on behalf of Aggrieved Employees and the LWDA for
11 the benefit of Aggrieved Employees and the LWDA, which is in addition to any Claim Amount paid to
12 Plaintiff as an Aggrieved Employee.

13 1.11 “Effective Date” means either (a) the 40th calendar day after a signed order approving this
14 Agreement has been filed provided no motion to vacate the judgment, appeal, writ or other appellate
15 proceeding having been filed; or (b) the seventh (7th) calendar day after any motion to vacate the
16 judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally dismissed
17 with no material change to the terms of this Agreement and here is no right to pursue further remedies or
18 relief, whichever is later.

19 1.12 “Final Approval Date” means the date the Court enters a signed order granting approval of
20 the Agreement.

21 1.13 “Gross Settlement Amount” is the sum of ninety thousand dollars (\$90,000).

22 1.14 “LWDA” means the California Labor and Workforce Development Agency.

23 1.15 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
24 distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after
25 deduction of Plaintiff’s attorneys’ fees and litigation costs, the Enhancement Payment, and the Claims
26 Administrator Costs.

27 1.16 “Notice of Settlement” means the document substantially in the form attached hereto as
28 Exhibit 1.

1.17 “PAGA” means Private Attorneys General Act.

1.18 “PAGA Claim Period” means July 2, 2019, to the date a signed order approving the Agreement has been filed with the court.

1.19 “PAGA Payment” means the 75% share of the Net Settlement Amount paid to the LWDA pursuant to Labor Code section 2699(i).

1.20 “Parties” mean Defendants and Plaintiff.

1.21 “Plaintiff” means Chaz Perez.

1.22 “Plaintiff’s Counsel” means Galen T. Shimoda and Jessica L. Hart of the Shimoda Law Corp.

1.23 “QSF” means a Qualified Settlement Fund set up by the Claims Administrator for the benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain the property of Defendants until the payments required under the Agreement are made.

1.24 “Qualifying Pay Periods” are pay periods worked by Aggrieved Employees during the PAGA Claim Period. The calculation of an Aggrieved Employees’ pay periods and a determination as to whether an Aggrieved Employee was actively employed in California in a particular pay period shall be construed from Defendants’ records.

1.25 “Releasees” means Defendants, as well as Defendants’ officers, shareholders, directors, agents, employees, affiliated Companies, including without limitation Too Infinity Management, LLC DBA Humble Root, Humble Root For the Patients, and Humble Root Worldwide, Inc., attorneys, and insurers.

1.26 “Released PAGA Claims” means all claims pled against Defendants in the Complaint, *i.e.* claims for civil penalties under the Private Attorneys General Act, Cal. Lab. Code §§ 2698 *et seq.* predicated on violations of violation of Labor Code sections 1194, 1197.1, and Wage Order No. 7, § 4 (failure to pay minimum wages); violation of Labor Code sections 226.7, 512 and Wage Order No. 7, §§ 11(A) and 11(B) (failure to provide meal periods or pay premiums in lieu thereof); violation of Labor Code sections 201-203, and 256 (failure to pay final wages); violation of Labor Code sections 226 and 226.3 (failure to provide accurate wage statements); violation of Labor Code sections 558 and 558.1

(violation of provision regulating hours and days of work in any Industrial Welfare Commission Order); violation of Labor Code sections 226.3 and 1174 (failure to maintain accurate time records); violation of Labor Code sections 510, 1194, and Wage Order No. 7, § 3 (failure to pay overtime wages); violation of Labor Code sections 226.7 and 512 and Wage Order No. 7, §§ 12(A) and 12(B) (failure to provide rest periods or pay premiums in lieu thereof); violation of Labor Code § 2802 (failure to pay reimbursement for expenses); and violation of Labor Code sections 246, 246.5, and 248.5 (failure to provide paid sick leave). This release shall extend through the PAGA Claim Period. However, the Released PAGA Claims shall not extend to any PAGA claims outside of those asserted in the Action or the PAGA Claim Period.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about July 2, 2020, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or pay premiums, failure to provide rest periods or pay premiums, failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursement for expenses, violations of provisions regulating hours and days of work in any Industrial Welfare Commission order, failure to maintain accurate records, and failure to provide paid sick leave. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 After exhausting administrative remedies, Plaintiff filed a Complaint on September 15, 2020, in Sacramento County Superior Court on behalf of himself and Aggrieved Employees for claims alleged in the July 2, 2020 notice to the LWDA.

2.3 Through informal discovery, Defendants and Defendants' Counsel provided Plaintiff's Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, information on the number of Aggrieved Employees, including, but not limited to, Aggrieved Employees' workweeks, dates of employment, total number of Aggrieved Employees, average rate of pay, and pay periods as well as timecard data for a randomly selected sample of Aggrieved Employees.

1 2.4 On June 28, 2021, the Parties participated in a lengthy mediation with a private mediator
2 David Perrault. At the conclusion of the mediation, the Parties were able to come to a resolution. At all
3 times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

4 2.5 Discussions between Plaintiff and Plaintiff's Counsel, between counsel for the Parties, the
5 mediator, document productions, extensive legal analysis, the provision of information by Defendants to
6 Plaintiff and the detailed analysis of the sampled records have permitted each side to assess the relative
7 merits of the PAGA claims and the defenses to those claims.

8 2.6 In the Action, Plaintiff contends that Defendants violated California law by 1) failing to
9 pay minimum wages, 2) failing to provide meal periods or premiums in lieu thereof, 3) failing to pay final
10 wages, 4) failing to provide accurate wage statements, 5) violating provisions regulating hours and days
11 of work in any Industrial Welfare Commission order, 6) failing to maintain accurate time records, 7)
12 failing to pay overtime wages, 8) failing to provide rest periods or premiums in lieu thereof, 9) failing to
13 reimburse expenses, and 10) failing to provide paid sick leave. Defendants have denied each of Plaintiff's
14 claims. The agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories of
15 potential exposure for the PAGA claims. The Parties, with the assistance of the mediator, also assessed
16 appropriate discounts to the potential liability based on Defendants' factual and legal contentions and
17 defenses. Plaintiff was given information pertaining to Defendants' financial condition, which enabled
18 Plaintiff to assess whether the Gross Settlement Amount was adequate and reach a definitive
19 determination that continued litigation would not result in a more favorable settlement.

20 2.7 The Parties agree that the above-described investigation and evaluation, as well as
21 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
22 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff,
23 Plaintiff's Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the
24 PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth
25 herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and
26 the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel,
27 Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and
28 terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

1 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

2 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
3 of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are
4 made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement
5 on a conditional basis in order for the Court to evaluate and approve the settlement. If the Court does not
6 enter an order approving the Agreement, this Agreement shall be deemed null and void; it shall be of no
7 force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the
8 negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
9 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
10 evidence that may be applicable.

11 3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties,
12 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants
13 have agreed to resolve the asserted PAGA claims in the Action via this Agreement, but to the extent this
14 Agreement is deemed void or the Final Approval Date does not occur, Defendants do not waive, and are
15 expressly reserving, all rights to challenge all such claims and allegations in the Action upon all procedural
16 and factual grounds, including, without limitation, the ability to challenge representative or collective
17 treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

18 **4. SCOPE OF THE AGGRIEVED EMPLOYEES**

19 4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits
20 as authorized under the Agreement and subject to all obligations and duties required under the Agreement,
21 shall include all Aggrieved Employees as defined in Section 1.2.

22 4.2 Aggrieved Employees entitled to recover under this Agreement will include only those
23 individuals who are identified in Defendants' records as having worked as an Aggrieved Employee.

24 **5. TERMS OF THE SETTLEMENT**

25 The Parties agree as follows:

26 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
27 Section 6, Defendants shall pay the Gross Settlement Amount (\$90,000). Funding of the Gross Settlement
28 Amount shall occur within ten (10) days after a signed order has been filed approving this Agreement, or

September 1, 2021, whichever is later. The Gross Settlement funds are to be held in trust in a QSF by the Claims Administrator until the Effective Date. The Gross Settlement Amount represents the maximum amount payable under this Agreement by Defendants, and includes without limitation, all Aggrieved Employee payments, payment to the LWDA, enhancement payment to the Plaintiff, attorneys' fees, costs and litigation expenses directly related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Claims Administrator Costs), and obtaining approval of the Agreement.

5.2 Attorneys' Fees and Costs: Plaintiff's Counsel will apply to the Court for attorney's fees of 35% or \$31,500 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Plaintiff's Counsel's application for attorneys' fees so long as it does not exceed the \$31,500 threshold. Plaintiff's Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$10,000, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Plaintiff's Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$10,000 threshold. The Claims Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Plaintiff's Counsel shall be added to the Net Settlement Amount as defined in section 1.15.

5.3 Aggrieved Employee Enhancement Payment: Defendants will not oppose Plaintiff's Counsel's request for an enhancement payment for Plaintiff Chaz Perez in the amount of \$10,000, which will be paid out of the Gross Settlement Amount, not in addition to the Gross Settlement Amount.

5.4 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed \$3,500. The difference between any actual costs and the allocated \$3,500 shall be added to the Net Settlement Amount.

5.5 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount allocated to Aggrieved Employees that was not claimed by Aggrieved Employees by cashing their respective settlement checks before the deadline to do so, that remaining amount shall be donated to the Center for Workers Rights. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

1 5.6 No Additional Benefits Contributions: All Claim Amounts paid to Aggrieved Employees
2 shall be deemed to be income solely in the year in which such amounts were actually received by
3 Aggrieved Employees. It is expressly understood and agreed that the receipt of such Claim Amounts will
4 not entitle any Aggrieved Employee to any new or additional compensation or benefits under any company
5 bonus or other compensation or benefit plan or agreement in place during the period covered by the
6 Agreement, nor will it entitle any Aggrieved Employee to any increased retirement, 401(k) benefits or
7 matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Claim
8 Amounts provided for in this Agreement are the sole payments to be made by Defendants to the Aggrieved
9 Employees in connection with this Agreement (notwithstanding any contrary language or agreement in
10 any benefit or compensation plan document that might have been in effect during the period covered by
11 this Agreement).

12 5.7 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Aggrieved
13 Employees reflect settlement of a dispute over claimed penalties. The characterization of Claim Amounts
14 to Aggrieved Employees are as follows:

15 5.8 One Hundred percent (100%) of each Aggrieved Employees' Claim Amount shall be
16 allocated for payment of disputed civil penalties. This portion of the Claim Amount consists of other
17 income, not wages, for which the Aggrieved Employees shall receive an IRS form 1099.

18 5.9 Aggrieved Employees shall be solely responsible for the reporting and payment of their
19 share of any federal, state and/or municipal income or other taxes on payments made pursuant to this
20 Agreement. No party has made any representation to any of the other Parties as to the taxability of any
21 payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to
22 Plaintiff's Counsel, or otherwise as to tax implications of any provision of this Agreement.

23 5.10 Pro Rata Distribution Formula: After Court approved attorneys' fees and costs, Plaintiff
24 enhancement, and Claims Administrator Costs are determined and a Net Settlement Amount has been
25 established, that Net Settlement Amount shall be divided between the PAGA Payment and payment to
26 Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount.
27 25% of the Net Settlement Amount will be paid to Aggrieved Employees. Each individual Aggrieved
28 Employees' Claim Amount shall be determined by taking the Qualifying Pay Periods for the individual

Aggrieved Employee and dividing that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount. Payment to Aggrieved Employees of their Claim Amount will not require the submission of any claim form.

5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 for any reason then Defendants and Plaintiff shall be equally responsible for the Claims Administrator Costs incurred between the date the Agreement was executed and the date of such event.

6. RELEASE

6.1 Upon the Effective Date, Plaintiff and each Aggrieved Employee shall be deemed to have fully, finally, and forever released the Releasees from all Released PAGA Claims.

6.2 Plaintiff agrees to fully release Defendants Humble Root International, Inc., Javier Hernandez, Chris Thao, and Justin Jacinto and each of its past and present owners, principals, directors, shareholders, officers, employees, agents, representatives, affiliated companies (including without limitation Too Infinity Management, LLC DBA Humble Root, Humble Root For the Patients, and Humble Root Worldwide, Inc.), parent companies, subsidiaries, alter egos, joint venturers, successors, predecessors, and all other persons and entities acting on their behalf, from any and all claims, actions, suits, demands, obligations, damages, costs and expenses (including any claim for attorneys' fees), and/or causes of action of any and every kind, nature or character whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, apparent or concealed, and whether specifically mentioned or not, which may exist or might be claimed to exist at or prior to the date of this Agreement, arising from and in any way connected to or with the instant Actions, the employment relationship between the parties, any actions taken during the employment relationship, the termination of that relationship, and any other dealing of any kind between the parties, including, without limitation, any claim based in tort, contract, common law, claims pursuant to state or federal Constitutions, or claims pursuant to state or federal statutes, any claim filed with any administrative agency, wage and hour claims, claims for missed meal or rest periods,

1 alleged failure to pay overtime, and PAGA claims, as well as all claims for physical or mental injuries,
2 illness or damage, and all claims for attorneys' fees, costs and expenses, as well as all claims, grievances,
3 claims and/or appeals under the Company's internal administrative review procedures, but excluding any
4 claims that cannot lawfully be waived or released by private agreement. Plaintiff further agrees to a release
5 pursuant to Civil Code section 1542. This release shall only take effect upon approval of the PAGA
6 settlement with the Court.

7 **7. SETTLEMENT ADMINISTRATION**

8 7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1)
9 receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating estimated
10 Claim Amounts and any and all applicable taxes associated with the Claim Amount; 3) taking appropriate
11 steps to trace and locate any individual Aggrieved Employees whose address or contact information as
12 provided to the Claims Administrator is inaccurate or outdated and mailing the Notice of Settlement to
13 Aggrieved Employees; 4) providing notification to the appropriate state officials of this Agreement as
14 required; 5) maintaining the Gross Settlement Amount in a QSF; 6) determining and paying the final
15 amounts due to be paid under the Agreement after resolution of awarded attorneys' fees and costs,
16 Enhancement Payment, and Claims Administrator Costs; 7) paying any residual funds from uncashed
17 checks to the *cy pres* beneficiary; 8) reporting to Plaintiff's Counsel and Defendants' Counsel regarding
18 the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b)
19 the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d)
20 the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for
21 undeliverable Notice of Settlements; (g) the number of Notice of Settlements undeliverable from traced
22 addresses; 13) providing a declaration to the Court regarding the final statistics of the administration and
23 compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting
24 on the QSF and payment of the Claim Amounts to Aggrieved Employees; and 15) carrying out other
25 related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All
26 disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to
27 the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this
28 Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

1 7.2 Aggrieved Employee Data: No later than twenty-one (21) calendar days after the Final
2 Approval Date, Defendants shall provide the Claims Administrator with the name, last known mailing
3 address, last known telephone number, Social Security Number, Qualifying Pay Periods, and start and end
4 date of employment (if any) of each Aggrieved Employee. The Claims Administrator shall review the
5 data to determine the number of Qualifying Pay Periods for each Aggrieved Employee. Defendants shall
6 not provide any information for pay periods during which an Aggrieved Employee may have worked as
7 an exempt employee, worked outside California, or worked outside the PAGA Claim Period. The Claims
8 Administrator shall maintain all information received from Defendants confidential to itself, and
9 Defendants' Counsel. However, Plaintiff's Counsel shall be able to review the breakdown of Qualified
10 Pay Periods and estimated Claim Amounts for Aggrieved Employees prior to mailing for quality
11 assurance.

12 7.3 Determination of Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA:
13 Within fourteen (14) calendar days after Defendants have provided the Claims Administrator with
14 information regarding Aggrieved Employees, the Claims Administrator shall calculate the final Net
15 Settlement Amount, PAGA Payment, and the final Claim Amounts for Aggrieved Employees, and report
16 the results of these calculations to Plaintiff's Counsel and Defendants' Counsel.

17 7.4 Delivery of Gross Settlement Amount and Claims Administrator Payments to Aggrieved
18 Employees, Plaintiff's Counsel, Plaintiff, and the LWDA: Defendants shall meet Plaintiff's Counsel at
19 River City Bank, located at 8923 Elk Grove Blvd., Elk Grove, CA, for funding of the Gross Settlement
20 Amount as described in Section 5.1 within ten (10) days after a signed order has been filed with the court
21 approving this Agreement, or September 1, 2021, whichever is later. Plaintiff's Counsel will deposit the
22 Gross Settlement Amount into a client trust account to be immediately transferred to the Claims
23 Administrator who will hold the Gross Settlement Amount in trust in a QSF. On the Effective Date, the
24 Claims Administrator shall deliver payment of Plaintiff's Counsels' attorney's fees and costs, Plaintiff's
25 enhancement payment, the PAGA Payment payable to the LWDA, Claims Administrator Costs, and
26 payment for Claim Amounts to Aggrieved Employees as required under this Agreement and approved by
27 the Court. Plaintiff's Counsel shall provide the Claims Administrator with the pertinent taxpayer
28

1 identification number and payment instructions for the attorney's fees and costs after the Final Approval
2 Date.

3 7.5 Notice to Aggrieved Employees: The Claims Administrator will provide a Notice of
4 Settlement, substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently with
5 providing payment for Claim Amounts as described in Section 7.4. The Notice of Settlement will inform
6 Aggrieved Employees of a summary of the terms and conditions of the Agreement. The Notice of
7 Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net Settlement
8 Amount, attorneys' fees and costs allocations, Claims Administrator Cost allocations, PAGA Payment
9 allocations, the scope of individuals covered by this Agreement, and the nature and extent of the Released
10 PAGA Claims.

11 7.6 Aggrieved Employee Mailing: On the Effective Date, the Claims Administrator will
12 perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA
13 search and will mail the respective payment for Claim Amounts, as determined in Section 7.3 and Notice
14 of Settlement, to each Aggrieved Employee by first-class mail, postage prepaid.

15 7.7 Returned and/or Re-mailed Notice Packets: In the event that a Notice of Settlement and
16 Claim Amount payment is returned to the Claims Administrator as non-delivered, the Notice of Settlement
17 and Claim Amount payment shall be sent to the forwarding address affixed thereto within seven (7)
18 calendar days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt
19 to determine a correct address using a single skip-trace, computer or other search using the name, address
20 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
21 seven (7) calendar days. Following each search that does not result in a corrected address, for those
22 Aggrieved Employees who appear to be current employees of Defendants at the time of the Effective
23 Date, the Claims Administrator shall contact Defendants' Counsel for assistance and Defendants shall
24 cooperate in good faith with the Claims Administrator's reasonable efforts to obtain valid mailing
25 addresses for Aggrieved Employees to the extent they were active employees of Defendants at the time of
26 the Effective Date. In the event the procedures in this paragraph are followed and the intended recipient
27 of a Notice of Settlement and Claim Amount payment still does not receive the Notice of Settlement and/or
28 Claim Amount payment, the Aggrieved Employee shall still be bound by all terms of the Agreement,

1 including the releases contained in Sections 1.25, 6.1, and 6.2, and any final judgment entered by the
2 Court.

3 7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
4 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement
5 and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties,
6 Plaintiff's Counsel, or Defendants' Counsel to provide notice of the Agreement except as expressly
7 required by the Court.

8 7.9 Settlement Check Expiration and Cy Pres: The Claims Administrator shall issue Claim
9 Amounts to Aggrieved Employees in the form of a check, which shall become null and void if not
10 deposited within one hundred twenty (120) calendar days of issuance. After one hundred twenty (120)
11 calendar days of issuance, the checks shall be voided and funds from all undeposited checks shall be
12 transmitted to the *cy pres* beneficiary identified in Section 5.5. The Claims Administrator shall deliver
13 the *cy pres* funds within fourteen (14) calendar days after the check cashing deadline.

14 7.10 Claims Administrator Declaration Regarding Settlement Administration: Within twenty-
15 one (21) days after the last day for Aggrieved Employees to cash their settlement checks, the Claims
16 Administrator shall provide Plaintiff's Counsel and Defendants' Counsel with a signed declaration under
17 penalty of perjury providing a complete and detailed report regarding the settlement administration and
18 that all the obligations of the Claims Administrator have been completed.

19 **8. SETTLEMENT ADMINISTRATION SCHEDULE**

20 8.1 The schedule may be modified depending on whether and when the Court grants necessary
21 approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. The schedule may
22 also be modified to correct clerical errors and to reflect the provisions in the Agreement as described
23 above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures
24 as expeditiously as reasonably practicable. The schedule for notice and payment procedures carrying out
25 the Agreement is as follows.
26
27
28

Last day for Defendants to provide Claims Administrator with Aggrieved Employee information	21 calendar days after Final Approval Date
Last day for Defendants to fund Gross Settlement Amount	Within 10 days after a signed order has been filed approving this Agreement or September 1, 2021, whichever is later
Last day for Claims Administrator to calculate and report to Parties the Net Settlement Amount, PAGA Payment, and Claim Amounts for Aggrieved Employees	Within 14 calendar days of receiving Aggrieved Employee information
Last day for Claims Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	On the Effective Date. <i>See</i> Section 1.11.
Last day for Claims Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Claims Administrator Costs, and payment to Aggrieved Employees	On the Effective Date
Last day for Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiary	Within 14 days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

1 **9. MISCELLANEOUS TERMS**

2 9.1 Dismissal and Retention of Jurisdiction to Enforce: Upon the Final Approval Date, the
3 Released PAGA Claims will be dismissed with prejudice, with the Court to retain jurisdiction over the
4 parties to enforce the terms therein pursuant to Civil Procedure Code section 664.6. The prevailing party
5 in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and
6 costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for
7 attorney's fees and costs is filed.

8 9.2 Additional Pay Period Contingency: Defendants have represented that there are no more
9 than 1728 pay periods during the PAGA Claim Period. In the event the number of pay periods during
10 the PAGA Claim Period is more than 1901 (i.e., greater than 10% more than 1728), then the Gross
11 Settlement Amount shall be increased proportionally by the pay periods in excess of 1728, multiplied
12 by the pay period value. For example, if there were 11,900 pay periods represented to exist during the
13 PAGA Claim Period, but there are actually 15,000 pay periods in the PAGA Claim Period, and the
14 actual pay period value is \$5.00 per pay period, Defendants would have to increase the Gross Settlement
15 Amount by \$15,500.00 (15,000 pay periods – 11,900 pay periods = 3,100 pay periods x \$5.00/pay
16 period).

17 9.3 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
18 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
19 execution of such other documents and the taking of such other action as may reasonably be necessary to
20 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
21 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
22 order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include
23 modifying and/or resubmitting the Agreement for approval. Plaintiff's Counsel shall be responsible for
24 drafting the court approval paperwork. All parties agree to act immediately and diligently to perform their
25 obligations under this Agreement, including the review and approval of settlement documents, such that
26 there are no substantial delays in seeking court approval or administration of this settlement. Plaintiff's
27 Counsel shall endeavor to file a motion for approval of this settlement within 60 days of the date this
28 Agreement is signed. Plaintiff's Counsel shall provide Defendants' Counsel with a draft approval motion

1 within 1 week after this Agreement is fully executed. Defendants' Counsel will provide comments and/or
2 proposed revisions within 1 week after receipt of the draft motion.

3 9.4 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
4 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
5 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
6 Complaint, the representative character of the Action, the validity of any of the claims that were or could
7 have been asserted by Plaintiff and/or Aggrieved Employees in the Action, or of any liability or guilt of
8 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
9 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved
10 Employees, or any other person, and Defendants have specifically disclaimed any liability, culpability,
11 negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person. Each of the
12 Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

13 9.5 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
14 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
15 the third business day after mailing by United States certified mail, return receipt requested, addressed as
16 follows:

17 To the Plaintiff:

18 Galen T. Shimoda
19 Justin P. Rodriguez
20 Brittany V. Berzin
21 Jessica L. Hart
22 Shimoda Law Corp.
23 9401 East Stockton Blvd., Suite 120
24 Elk Grove, CA 95624

25 To Defendants:

26 Laura C. McHugh
27 Samantha J. Tanner
28 Duggan McHugh Law Corporation
 641 Fulton Avenue, Suite 100
 Sacramento, CA 95825

9.6 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that

1 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
2 party or its counsel participated in the drafting of this Agreement.

3 9.7 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the
4 terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the
5 terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties
6 hereto and their respective heirs, trustees, executors, Claims Administrators, successors, and assigns.

7 9.8 Attorneys' Fees and Costs Limitations: Neither Plaintiff's Counsel nor any other attorneys
8 acting for, or purporting to act for, Aggrieved Employees, or Plaintiff, may recover or seek to recover any
9 amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as
10 expressly provided herein.

11 9.9 No Modifications: This Agreement may not be changed, altered, or modified, except in
12 writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged
13 except by performance in accordance with its terms.

14 9.10 Counterparts: This Agreement shall become effective upon its execution by all of the
15 undersigned. Plaintiff, Plaintiff's Counsel, Defendants and Defendants' Counsel may execute this
16 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
17 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
18 same force and effect of originals.

19 9.11 Choice of Law: The Agreement and the exhibits hereto shall be considered to have been
20 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
21 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
22 with, and governed by, the substantive laws of the State of California without giving effect to that State's
23 choice of law principles.

24 9.12 Headings and Captions: Paragraph titles or captions contained in the Agreement are
25 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
26 scope of this Agreement, or any provision thereof.

27 9.13 No Retaliation or Discouragement: The Parties agree they will take no action that could
28 be construed as retaliation against any Aggrieved Employees for participating in this settlement.

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

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiff:

Date: 8/19/2021 _____

DocuSigned by:

 06E8C921390C4D8...
 Chaz Perez

For Defendants:

Date: _____

 For Humble Root International, Inc.

Date: _____

 Javier Hernandez

Date: _____

 Chris Thao

Date: _____

 Justin Jacinto

1 9.14 Integrated Agreement: This Agreement and the *PAGA Settlement Memorandum of*
2 *Understanding* sets forth the entire understanding between the Parties with regard to any and all material
3 terms or otherwise and supersedes any and all prior agreements, oral or written, pertaining to the subject
4 matter hereof. Each party acknowledges that there is no representation, inducement, promise or agreement
5 which has been made, orally or otherwise, by the other party, concerning the terms or conditions of this
6 Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the
7 Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the
8 Parties.

9 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
10 attorneys, as of the day and year herein set forth.

11 **For Plaintiff:**

12 Date: _____

13 _____
Chaz Perez

14 **For Defendants:**

15 Date: 8/18/21

16 _____
For Humble Root International, Inc.

17 Date: 8/18/21

18 _____
Javier Hernandez

19 Date: 8/18/21

20 _____
Chris Thao

21 Date: 8/18/2021

22 _____
Justin Jacinto

1 APPROVED AS TO FORM

2
3 Dated: 08/17/2021

Shimoda Law Corp.

By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Jessica L. Hart
Attorney for Plaintiff and Aggrieved
Employees

7 APPROVED AS TO FORM

8
9
10 Dated: August 23, 2021

Duggan McHugh Law Corporation

By: 

Laura C. McHugh
Samantha J. Tanner
Attorney for Defendants

EXHIBIT 1

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

Case No. 34-2020-00285276

CHAZ PEREZ, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

TOO INFINITY MANAGEMENT, LLC, a California
Limited Liability Company; HUMBLE ROOT
INTERNATIONAL, INC., a California Corporation;
JAVIER HERNANDEZ, an individual; CHRIS
THAO, an individual; JUSTIN JACINTO, an
individual; and DOES 1 to 100, inclusive,

Defendants.

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All hourly non-exempt employees who have or continue to work for Defendants in California from July 2, 2019, to [REDACTED] (the "Aggrieved Employees").

This Notice is being provided to you to inform you of a Private Attorney General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Perez v. Too Infinity Management, LLC, et al.*, Sacramento County Superior Court, Case No. 34-2020-00285276, filed September 15, 2020 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Chaz Perez ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of himself and Aggrieved Employees. Plaintiff alleged that Humble Root International, Inc., Javier Hernandez, Chris Thao, and Justin Jacinto. ("Defendants") violated California law by 1) failing to pay minimum wages, 2) failing to provide meal periods or pay premiums in lieu thereof, 3) failing to pay final wages, 4) failing to provide accurate wage statements, 5) violating provisions regulating hours and days of work in any Industrial Welfare Commission order, 6) failing to maintain accurate time records, 7) failing to pay overtime wages, 8) failing to provide rest periods or pay premiums in lieu thereof, 9) failing to reimburse expenses, and 10) failing to provide paid sick leave. Defendants have denied all of Plaintiff's allegations. All class claims and allegations were dismissed without prejudice in connection with the Order approving the PAGA Settlement.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiff or to any other current or former employees, and Defendants do not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the Private Attorneys General Act, Cal. Lab. Code §§ 2698 *et seq.* predicated on violations of Labor Code sections 1194, 1197.1, 226.7, 512, 201-203, 256, 226, 226.3, 558, 558.1, 1174, 510, 226.7, 2802, 246, 246.5, and 248.5. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for the PAGA Settlement, Plaintiff has agreed to waive any and all liability for violation of the PAGA based on violations of the Labor Code sections above, as alleged in the Action. This waiver shall apply to all Aggrieved Employees, including you. However, the waiver does not extend to any non-PAGA claims or PAGA claims outside of those asserted in the Action, or claims arising outside of the July 2, 2019, to [REDACTED].

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$90,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$31,500, attorneys' costs in the amount of \$_____, Plaintiff enhancement payment in the amount of \$10,000, the fees and expenses of the Claims Administrator in the amount of \$_____, which will result in a "Net Settlement Amount" of \$_____ for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$_____) is being paid to the LWDA and 25% of the Net Settlement Amount (\$_____) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between July 2, 2019 to _____, and dividing that number by the number of pay periods worked for all Aggrieved Employees between July 2, 2019, to _____, and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

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Brittany V. Berzin
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On behalf of Plaintiff

Laura C. McHugh
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Sacramento, CA 95825
On behalf of Defendants

EXHIBIT B

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

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

CHAZ PEREZ, on behalf of himself and
similarly situated employees,

Plaintiff,

vs.

TOO INFINITY MANAGEMENT, LLC, a
California Limited Liability Company;
HUMBLE ROOT INTERNATIONAL, INC.,
a California Corporation; JAVIER
HERNANDEZ, an individual; CHRIS THAO,
an individual; JUSTIN JACINTO, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00285276

FIRST AMENDED COMPLAINT:

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act Claims
(Labor Code § 2699 *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiff CHAZ PEREZ, on behalf of himself and all other similarly situated employees
(hereinafter collectively referred to as "Plaintiff"), hereby files this Class Action Complaint against
Defendants HUMBLE ROOT INTERNATIONAL, INC., a California Corporation; JAVIER
HERNANDEZ, an individual; CHRIS THAO, an individual; JUSTIN JACINTO, an individual; and
DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information
and belief, Plaintiff alleges the following:

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INTRODUCTION

1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff and similarly situated employees seeking unpaid overtime and minimum wages, unpaid meal and rest period premiums, unpaid reimbursement expenses, wage statement violations, failure to pay timely wages, and unfair competition. Plaintiff seeks these unpaid wages and associated penalties, plus interest and attorneys' fees, on behalf of himself and similarly situated employees.

JURISDICTION AND VENUE

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

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

4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA") on approximately July 2, 2020. Plaintiff provided facts and legal basis for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The July 2, 2020 notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include but are not limited to the following: All non-exempt employees who are currently working or have worked for Defendants from July 2, 2019 through judgment.

PARTIES

5. Plaintiff CHAZ PEREZ is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges HUMBLE ROOT INTERNATIONAL, INC. is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that JAVIER HERNANDEZ is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that JAVIER HERNANDEZ is an owner, director, officer, and/or managing agent of, HUMBLE ROOT INTERNATIONAL, INC., responsible for causing the violations of the California Labor Code asserted in this Complaint. As such JAVIER HERNANDEZ is individually liable pursuant to California Labor Code section 558.1.

8. Plaintiff is informed and believes, and thereupon alleges, that CHRIS THAO is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that CHRIS THAO is an owner, director, officer, and/or managing agent of HUMBLE ROOT INTERNATIONAL, INC., responsible for causing the violations of the California Labor Code asserted in this Complaint. As such CHRIS THAO is individually liable pursuant to California Labor Code section 558.1.

9. Plaintiff is informed and believes, and thereupon alleges, that JUSTIN JACINTO is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that JUSTIN JACINTO is an owner, director, officer, and/or managing agent of HUMBLE ROOT INTERNATIONAL, INC., responsible for causing the violations of the California Labor Code asserted in this Complaint. As such JUSTIN JACINTO is individually liable pursuant to California Labor Code section 558.1.

10. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

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

4 12. Defendants, and each of them, are now and/or at all times mentioned in this
5 Complaint, were members of and/or engaged in a joint employment, joint venture, partnership and
6 common enterprise, and were acting within the course and scope of, and in pursuance of said joint
7 employment, joint venture, partnership and common enterprise.

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

10 14. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
11 wrongs, complaints, injuries and/or damages alleged in this Complaint.

12 CLASS ALLEGATIONS

13 15. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
14 class action pursuant to California Code of Civil Procedure section 382. The class that Plaintiff
15 seeks to represent is composed of and defined as follows:

16
17 All hourly non-exempt employees who have or continue to work for Defendants in California
18 at any time four (4) years prior to the filing of this Action and up to the date this matter is
certified as a class action.

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

22 (a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all members is
23 impracticable under the circumstances of this case. While the exact number of class
24 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
25 Defendants have employed as many as one hundred (100) individuals falling within the
26 above stated class definition throughout the State of California during the applicable statute
27 of limitations, who were subjected to the practices outlined in this Complaint. As such,
28 joinder of all members of the Plaintiff Class is not practicable.

1 (b) Common Questions Predominate: Common questions of law and fact exist as to all members
2 of the Plaintiff Class and predominate over questions that affect only individual members of
3 the class. These common questions of law and fact include, without limitation, the following:

- 4 (1) Whether Defendants paid Plaintiff and members of the putative class for all hours
5 worked.
- 6 (2) Whether Defendant paid Plaintiff and members of the putative class at least minimum
7 wage for all hours worked;
- 8 (3) Whether Defendants properly paid Plaintiff and members of the putative class for all
9 overtime hours worked;
- 10 (4) Whether Plaintiff and members of the putative class worked over eight (8) hours in a
11 day;
- 12 (5) Whether Plaintiff and members of the putative class worked over forty (40) hours in a
13 week;
- 14 (6) Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
15 members of the putative class for all hours worked;
- 16 (7) Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
17 members of the putative class for all overtime hours worked;
- 18 (8) Whether Defendants had a policy and/or practice allowing for or providing Plaintiff
19 and members of the putative class meal periods as required by law;
- 20 (9) Whether Defendants had a policy and/or practice allowing for or providing Plaintiff
21 and members of the putative class rest periods as required by law;
- 22 (10) Whether Defendants accurately stated all required information on paystubs issued to
23 Plaintiff and members of the putative class;
- 24 (11) Whether Defendants had a policy and/or practice that provided reimbursement of
25 business expenses owed to Plaintiff and members of the putative class; and
- 26 (12) Whether Defendants provided Plaintiff and members of the putative class their final
27 wages in compliance with Labor Code sections 201 to 203.
- 28

1 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class.

2 He also sustained damages arising out of Defendants' common course of conduct in violation
3 of the law as complained of herein. Plaintiff and all members of the putative class were non-
4 exempt employees who were not paid for all hours worked and were not provided all legally
5 mandated meal and rest periods, because of Defendants' policies and practices resulting in a
6 failure to pay all overtime wages, minimum wages, and meal and rest period premiums.

7 Additionally, Defendants failed to provide any sick leave to Plaintiff and similarly situated
8 employees. Further, Defendants issued Plaintiff and all members of the putative class wage
9 statements that did not comply with Labor Code section 226. Defendants also failed to pay
10 Plaintiff and all members of the putative class all reimbursement expenses incurred. As a
11 result, each putative class member will have the same basis for unpaid wage claims as does
12 Plaintiff.

13 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
14 putative class. For all relevant times, Plaintiff resided in California, worked for Defendants
15 in California, and is an adequate representative of the putative class as he has no interests that
16 are adverse to those of absent class members. Additionally, Plaintiff has retained counsel
17 who has substantial experience in complex civil litigation and wage and hour matters.

18 (e) Superiority: A class action is superior to other available means for the fair and efficient
19 adjudication of the controversy since individual joinder of all members of the class is
20 impracticable. Class action treatment will permit a larger number of similarly situated
21 persons to prosecute their common claims in a single forum simultaneously, efficiently, and
22 without the unnecessary duplication of effort and expense that numerous individual actions
23 would engender. Further, as damages suffered by each individual member of the class may
24 be relatively small, the expenses and burden of the individual litigation would make it
25 difficult or impossible for individual members of the class to redress the wrongs done to
26 them, and an important public interest will be served by addressing the matter as a class
27 action. The cost to the court system of adjudication of such individualized litigation would
28

1 be substantial. Individualized litigation would also present the potential for inconsistent or
2 contradictory judgments.

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

5 **GENERAL ALLEGATIONS**

6 18. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 17 as though fully
7 set forth herein.

8 19. Plaintiff worked for Defendants from November 2019 to March 2020. Defendants jointly
9 own and operate a marijuana online retail business that sells and delivers marijuana to customers.
10 Plaintiff worked as a courier for Defendants. He delivered marijuana in the Sacramento, Stockton, and
11 Tracy area. Plaintiff regularly drove to Tracy and other towns to deliver marijuana to Defendants'
12 customers. Plaintiff and similarly situated employees typically worked six (6) to eight (8) hours per day
13 and, and between thirty (30) and forty (40) hours per week. Plaintiff and similarly situated employees
14 sometimes worked over eight (8) hours per day and over forty (40) hours per week.

15 20. Defendants failed to pay Plaintiff and similarly situated employees for all hours worked.
16 Plaintiff and similarly situated employees were underpaid because Defendants failed to pay for all hours
17 worked. Defendants rounded any work time and this negatively impacted Plaintiff and similarly situated
18 employees. In addition, the delivery cars were parked about one (1) mile from the work site.
19 Sometimes, prior to clocking in, Plaintiff and similarly situated employees would drive to the parking
20 area to pick up the delivery cars. Defendants did not pay Plaintiff and similarly situated employees for
21 the time they spent driving to the delivery car prior to clocking in. Further, Defendants did not pay
22 Plaintiff and similarly situated employees for all overtime hours worked.

23 21. Moreover, Plaintiff and similarly situated employees missed many meal periods and took
24 late meal periods. Plaintiff missed many meal periods and took many meal periods after the fifth hour
25 of work because of Defendants' policies. Defendants' meal period policy is defective and contributed to
26 many late meal periods. Also, staff shortage and delivery schedules caused Plaintiff to miss and take
27 late meal periods. Due to the delivery schedule, Plaintiff sometimes had to eat while working. For
28 example, he would pick up food at a gas station while putting gas in his delivery vehicle. Defendants

1 called Plaintiff on his phone if Defendants noticed through their monitoring application or GPS device
2 that Plaintiff stopped at a customer's site or somewhere longer than usual. Defendants put pressure on
3 Plaintiff and similarly situated employees to work as fast as possible. Such policies also resulted in
4 many missed rest breaks for Plaintiff and similarly situated employees. Defendants' policies
5 discouraged rest breaks and penalized Plaintiff and similarly situated employees for taking their rest
6 breaks. For example, on one occasion, Plaintiff was falling asleep while driving. As a result, he pulled
7 over to get a coffee and to take a rest break. However, Defendants were notified from the monitoring
8 device that Plaintiff had stopped his car at a drive through. As a result, Defendants called Plaintiff and
9 told him that he would be written up for taking a rest break and stopping at a drive through.

10 22. Further, Defendants did not reimburse Plaintiff and similarly situated employees for
11 using their cell phones for work purposes. Plaintiff and similarly situated employees used their cell
12 phones to talk to the dispatcher, for directions, and for delivery routes when their work cell phones had
13 problems or were not charged. Plaintiff and similarly situated employees would drive their own cars to
14 pick up the delivery cars. Defendants, however, did not reimburse Plaintiff and similarly situated
15 employees for using their own cars for work purposes, such as picking up delivery cars that were parked
16 one (1) mile away from the work location.

17 23. Additionally, Defendants failed to authorize Plaintiff and similarly situated employees to
18 take their sick leave. Defendants did not tell Plaintiff and similarly situated employees how many sick
19 days they were entitled to. In fact, when Plaintiff was hired, Defendants told him that he does not get
20 any sick time. Moreover, Defendants marked him as having an unexcused absence even when Plaintiff
21 had a doctor's note excusing him from work. Defendants discouraged Plaintiff and similarly situated
22 employees from taking sick days. Defendants told Plaintiff and similarly situated employees that taking
23 sick days would negatively affect their attendance record. At times, Plaintiff and similarly situated
24 employees reported to work even when they were sick.

25 24. As a result of Defendants' rounding policy, failure to pay minimum wages, failure to pay
26 overtime wages, failure to pay reimbursement expenses, and failure to pay meal and rest period
27 premiums, Defendants failed to provide all final wages owed to Plaintiff and similarly situated
28 employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their

1 resignation. In addition, Defendants failed to keep accurate time records and failed to provide Plaintiff
2 and similarly situated employees with accurate wage statements. The wage statements Defendants
3 provided to Plaintiff and similarly situated employees did not accurately state their total regular hours
4 worked, gross wages and net wages, all deductions made, and the full address of the legal entity that is
5 the employer. The address on Plaintiff's paystubs does not state the city where the employer legal entity
6 is located. Consequently, the wage statements were defective.

7 25. At all times during Plaintiff and similarly situated employees' employment relationship
8 with Defendants, JUSTIN JACINTO, CHRIS THAO, and JAVIER HERNANDEZ were Defendants'
9 co-owners. As a result, all had authority and control over Plaintiff and similarly situated employees'
10 hours worked, wages, job duties, and other terms and conditions of employment. All Defendants
11 demonstrated control over all Plaintiffs wages earned and job duties. It is Plaintiff's understanding that
12 each and all of them had the authority to hire and/or fire employees of Defendants. JUSTIN JACINTO,
13 CHRIS THAO, and JAVIER HERNANDEZ are and/or were owners, officers, directors, and
14 shareholders of Defendants. They developed, maintained, implemented, and caused the unlawful wage
15 and hour practices described herein to occur.

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PAY OVERTIME WAGES**
19 **(As to all Defendants)**

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

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

27 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
28 and/or forty (40) hours per week on several occasions while employed by Defendants. However,

1 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
2 worked at the regular rate of pay.

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

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

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
10 **(As to all Defendants)**

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

13 32. For the period preceding the filing of this Complaint, Defendants were required to
14 compensate Plaintiff with at least California's applicable minimum for every hour worked. *See MW-*
15 *Order 2019; IWC Wage Order, No. 7, section 4(A); Cal. Lab. Code § 1194.*

16 33. Plaintiff and similarly situated employees were not exempt to the State's Minimum Wage
17 Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but
18 failed to do so. Indeed, Defendants were aware that their rounding policy and other policies outlined
19 above resulted in a forfeiture of wages and unpaid, off-the-clock work.

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

23 **THIRD CAUSE OF ACTION**
24 **MEAL PERIOD VIOLATIONS**
25 **(As to all Defendants)**

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

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

1 37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 7, section
2 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
3 minutes for each work period of more than five (5) hours.

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

10 39. Defendants employed Plaintiff and similarly situated employees for periods of more
11 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
12 period of at least thirty (30) minutes when Plaintiffs worked more than ten (10) hours in a day.
13 Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal
14 period before the completion of their fifth hour of work and failed to allow Plaintiffs to take their
15 second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated
16 employees did not waive their rights to all meal periods throughout their employment.

17 40. Defendants further failed to pay Plaintiff and similarly situated employees the
18 applicable meal period premiums for any such missed meal periods.

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

22 **FOURTH CAUSE OF ACTION**
23 **REST PERIOD VIOLATIONS**
24 **(As to all Defendants)**

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

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

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

45. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

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

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

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

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

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

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

years at the place of employment or at a central location within the State of California.

50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's total hours worked due to Defendants' rounding policy and other policies stated above that resulted in off-the-clock work. Plaintiff was not able to promptly and easily determine his total hours worked from their paystubs alone. Additionally, Plaintiff suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

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

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

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

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

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

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

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

1 57. Defendants knew of their obligation to pay Plaintiff's final wages when their employment
2 terminated. Indeed, Defendants were aware that their rounding policy and other policies outlined above
3 resulted in a forfeiture of wages and unpaid, off-the-clock work. Such conduct shows Defendants had
4 knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the
5 remaining wages owed.

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

9
10 **SEVENTH CAUSE OF ACTION**
FAILURE TO REIMBURSE EXPENSES
11 **(As to all Defendants)**

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

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

19 61. Defendants required Plaintiff and similarly situated employees to use their personal
20 phones when their work phone were having problems, or were out of batteries, in order to communicate
21 with the dispatcher for delivery routes and directions to customers' homes. Defendants also required
22 Plaintiff and similarly situated employees to use their vehicles to pick up Defendants' delivery vehicles
23 but failed to reimburse them for such use.

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

27 //

28 //

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EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION

(As to Defendants HUMBLE ROOT INTERNATIONAL, INC., and DOES 1 to 100)

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

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

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

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

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

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

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

69. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other aggrieved current and former employees:

- Violation of Labor Code sections 1194, 1197.1, and Wage Order No. 7, § 4 (Failure to Pay Minimum Wages);
- Violation of Labor Code section 226.7, 512 and Wage Order No. 7, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code sections 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code sections 226, 226.3 (Failure to Provide Accurate Wage Statements);
- Violation of Labor Code section 558 and 558.1 (Violation of Provision Regulating Hours and Days of Work in Any Industrial Welfare Commission Order);
- Violation of Labor Code sections 226.3 and 1174 (Failure to Maintain Accurate Time Records);
- Violation of Labor Code sections 510 and 1194 Wage Order No. 7, § 3 (Failure to Pay Overtime Wages);
- Violation of Labor Code section 226.7, 512 and Wage Order No. 7, §§ 12(A) and 12(B) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code § 2802 (Failure to Pay Reimbursement for Expenses); and
- Violation of Labor Code sections 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave).

70. Plaintiff has received authorization, based on the LWDA's failure to send notice of its intent to pursue Plaintiff's claims and based on Defendants' failure to cure Plaintiff's claims, to act on behalf of the Labor Commissioner to assess civil penalties against Defendants.

71. Plaintiff seeks civil penalties against Defendants pursuant to Labor Code section 2699(f)(2) to the extent there is no enumerated penalty provision for the specific sections cited above.

72. Plaintiff seeks these civil penalties on behalf of himself and all other former and current employees from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;

- 1 2. As to the First Cause of Action:
- 2 a. Wages in an amount to be proven at trial;
- 3 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 4 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
- 5 Code section 1194;
- 6 3. As to the Second Cause of Action:
- 7 a. Wages in an amount to be proven at trial;
- 8 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 9 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
- 10 Code section 1194;
- 11 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 12 4. As to the Third Cause of Action:
- 13 a. Wages in an amount to be proven at trial;
- 14 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 15 section 1021.5;
- 16 5. As to the Fourth Cause of Action:
- 17 a. Wages in an amount to be proven at trial;
- 18 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 19 section 1021.5;
- 20 6. As to the Fifth Cause of Action:
- 21 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 22 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 23 violation occurred and one hundred dollars (\$100.00) per employee for each
- 24 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 25 (\$4,000.00);
- 26 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 27 226(e);
- 28

1 7. As to the Seventh Cause of Action:

2 a. An amount to be proven at trial;

3 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

4 8. As to the Ninth Cause of Action:

5 a. For civil penalties as provided for in the Labor Code for each
6 enumerated violation;

7 b. For those Labor Code sections, the violation of which there is no civil penalty
8 provided, the default penalty provided in Labor Code section 2699(f): for any
9 initial violation, one hundred dollars (\$100) for each aggrieved employee per
10 pay period; For any subsequent violation, two hundred dollars (\$200) for each
11 aggrieved employee per pay period;

12 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

13 d. For any other remedies as allowed by law and/or deemed appropriate by the
14 Court;

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

17 a. Wages as proved at trial;

18 b. Injunctive and Declaratory relief;

19 c. Attorney's fees and costs as provided for by law; and

20 d. Interest.

21
22 Dated: May 11, 2021

Shimoda Law Corp.

23
24 By: _____



25 Galen T. Shimoda
26 Justin P. Rodriguez
27 Brittany V. Berzin
28 Jessica L. Hart
 Attorneys for Plaintiff

1 *Perez v Too Infinity Management, LLC, et al.*
2 *Sacramento Superior Court Case No. 34-2020-00285276*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

5 I, Rylee K. Fonseca, declare that:

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

8 On May 18, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint

10 Laura C. McHugh (SBN 180930) 11 Samantha J. Tanner (SBN 314952) 12 Duggan McHugh Law Corporation 13 641 Fulton Ave, Suite 100 Sacramento, CA 95825 Phone: (916) 550-5309 Fax: (916) 404-5900 Email: laura@dugganmchugh.com samantha@dugganmchugh.com jason@dugganmchugh.com	
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14 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
15 processing of correspondence for mailing with the United States Postal
16 Service and that each day's mail is deposited with the United States Postal
17 Service that same day in the ordinary course of business. On the date set forth
18 above, I served the aforementioned document(s) on the parties in said action
by placing a true copy thereof enclosed in a sealed envelope with postage
thereon fully prepaid, for collection and mailing on this date, following
ordinary business practices, at Elk Grove, California, addressed as set forth
above.

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

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

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

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct, and that this declaration was executed on May 18, 2021, at Elk
25 Grove, California.

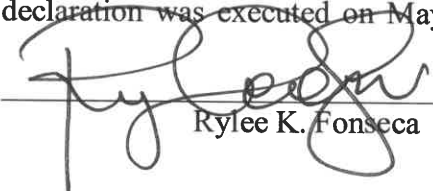
26 
Rylee K. Fonseca

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #200
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

July 2, 2020

For Online Filing:

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

Re: *Chaz Perez v. Too Infinity Management, LLC, et al.*

Dear Labor Commissioner,

As counsel for Chaz Perez (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

Too Infinity Management, LLC
2103 3rd Street, STE A
Sacramento, CA 95818

Too Infinity Management, LLC DBA Humble Root
2081 Rene Ave, BLDG B3
Sacramento, CA 95838

Humble Root For The Patients (Dissolved)
2081 Rene Ave, STE B
Sacramento, CA 95838

Humble Root International, Inc.
2015 Q Street, Suite C
Sacramento, CA 95811

Humble Root Worldwide, Inc.
2015 Q Street, Suite C
Sacramento, CA 95811

Javier Hernandez
5053 Felicia Way
Elk Grove, CA 95758



Chris Thao
5221 Crystal Hill Way
Sacramento, CA 95823

Justin Jacinto
3522 Garden Rose Dr
Sacramento, CA 95827

Justin Jacinto
800 J ST Unit 412
Sacramento, CA 95814

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Too Infinity Management, LLC, Too Infinity Management, LLC DBA Humble Root, Humble Root For The Patients, Humble Root International, Inc., Humble Root Worldwide, Inc., Justin Jacinto, Javier Hernandez, and Chris Thao (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all of Defendants' hourly non-exempt employees who have or continue to work for Defendants in California. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff Chaz Perez worked for Defendants from November 2019 to March 2020. Defendants jointly own and operate a marijuana online retail business that sells and delivers marijuana to customers. Claimant worked as a courier for Defendants. He delivered marijuana in the Sacramento, Stockton, and Tracy area. Plaintiff regularly drove to Tracy and other towns to deliver marijuana to Defendants' customers. Plaintiff and Aggrieved Employees typically worked six (6) to eight (8) hours per day and, and between thirty (30) and forty (40) hours per week. Plaintiff and Aggrieved Employees sometimes worked over eight (8) hours per day and over forty (40) hours per week.

Defendants failed to pay Plaintiff and Aggrieved Employees for all hours worked. Plaintiff was underpaid due to the fact that Defendants failed to pay for all of his hours worked. Defendants rounded any work time and this negatively impacted Plaintiff and Aggrieved Employees. In addition, the delivery cars were parked about one (1) mile from the work site.



After clocking in, Plaintiff and Aggrieved Employees would drive their own cars to pick up the delivery cars. Sometimes, prior to clocking in, some Aggrieved Employees would drive to the parking area to pick up the delivery cars. These Aggrieved Employees were not paid for the time that they spent driving to the delivery car prior to clocking in. Further, Defendants did not pay Plaintiff and Aggrieved Employees for all overtime hours worked.

Moreover, Plaintiff and Aggrieved Employees missed many meal periods and took late meal periods. Plaintiff missed many meal periods and took many meal periods after the fifth hour of work because of Defendants' policies. Defendants' meal period policy is defective and contributed to many late meal periods. Also, staff shortage and delivery schedules caused Plaintiff to miss and take late meal periods. Due to the delivery schedule, Plaintiff sometimes had to eat while working. For example, he would pick up food at a gas station while putting gas on his delivery vehicle. Defendants called Plaintiff on his phone if Defendants noticed through their monitoring application or GPS device that Plaintiff stopped at a customer's site or somewhere longer than usual. Defendants put pressure on Plaintiff and Aggrieved Employees to work as fast as possible. Such policies also resulted in many missed rest breaks for Plaintiff and Aggrieved Employees. Defendants' policies discouraged rest breaks and penalized Plaintiff and Aggrieved Employees for taking their rest breaks. For example, on one occasion, Plaintiff was falling asleep while driving. As a result, he pulled over to get a coffee and to take a rest break. However, Defendants were notified from the monitoring device that Plaintiff had stopped his car at a drive through. As a result, Defendants called Plaintiff and told him that he would be written up for taking a rest break and stopping at a drive through.

Further, Defendants did not reimburse Plaintiff and Aggrieved Employees for using their cell phones for work purposes. Plaintiff and Aggrieved Employees used their cell phones to talk to the dispatcher, for directions, and for delivery routes when their work cell phones had problems or were not charged. Plaintiff and Aggrieved Employees would drive their own cars after clocking in to pick up the delivery cars. However, Defendants did not reimburse Plaintiff and Aggrieved Employees for using their own cars for work purposes, such as picking up delivery cars that were parked one (1) mile away from the work location.

Additionally, Defendants failed to authorize Plaintiff and Aggrieved Employees to take their sick leave. Defendants did not tell Plaintiff how many sick days he was entitled to. In fact, when he was hired, Defendants told him that he does not get any sick time. Moreover, Defendants marked him as having an unexcused absence even when Plaintiff had a doctor's note excusing him from work. Defendants discouraged Plaintiff and Aggrieved Employees from taking sick days. Defendants told Plaintiff and Aggrieved Employees that taking sick days would negatively affect their attendance record. At times, Plaintiff and Aggrieved Employees reported to work even when they were sick.

As a result of Defendants' rounding policy, failure to pay minimum wages, failure to pay overtime wages, failure to pay reimbursement expenses, and failure to pay meal and rest period



premium, Defendants failed to provide all final wages owed to Plaintiff and Aggrieved Employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation. In addition, Defendants failed to keep accurate time records and failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements Defendants provided to Plaintiff and Aggrieved Employees did not accurately state their total regular hours worked, gross wages and net wages, all deductions made, and the full address of the legal entity that is the employer. The address in Plaintiff's paystubs does not state the city where the employer legal entity is located. Consequently, the wage statements were defective.

At all times during Plaintiff's and Aggrieved Employees' employment relationship with Defendants, Justin Jacinto, Chris Thao, and Javier Hernandez were Defendants' co-owners. As a result, all had authority and control over Plaintiff's and Aggrieved Employees' hours worked, wages, job duties, and other terms and conditions of employment. All Defendants demonstrated control over Plaintiff's wages earned and job duties. It is Plaintiff's understanding that each and all of them had the authority to hire and/or fire employees of Defendants. Justin Jacinto, Chris Thao, and Javier Hernandez are and/or were owners, officers, directors, and shareholders of Defendants. They developed, maintained, implemented, and caused the unlawful wage and hour practices described herein to occur.

B. ALLEGATIONS AND CHARGES

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

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

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

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



Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

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

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

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

Labor Code section 226.7 and Wage Order No. 7, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

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

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



the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

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

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

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

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for cell phone use and personal car use for work purposes by Plaintiff and Aggrieved Employees. This was in violation of the law.

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

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

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Count Nine – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

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

Count Ten – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

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

Very truly yours,

Shimoda Law Corp.

By: 
Galen T. Shimoda

GTS:rk

cc: Client via e-mail

cc: Dale E. Grindrod, Esq., P.O. Box 4203, Salinas, CA 93912 via regular mail.

1 *Chaz Perez v. Too Infinity Management, LLC, et al.*

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

4 I, Melissa A. Phillips, declare that:

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

7 On July 2, 2020, I served the following documents on the party below:

- 8
 - Private Attorney General Act Letter

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10 Too Infinity Management, LLC 2103 3rd Street, STE A Sacramento, CA 95818	Too Infinity Management, LLC DBA Humble Root 2081 Rene Ave, BLDG B3 Sacramento, CA 95838
11 Humble Root For The Patients (Dissolved) 2081 Rene Ave, STE B Sacramento, CA 95838	Humble Root International, Inc. 2015 Q Street, Suite C Sacramento, CA 95811
13 Humble Root Worldwide, Inc. 2015 Q Street, Suite C Sacramento, CA 95811	Javier Hernandez 5053 Felicia Way Elk Grove, CA 95758
15 Chris Thao 5221 Crystal Hill Way Sacramento, CA 95823	Justin Jacinto 3522 Garden Rose Dr Sacramento, CA 95827
17 Justin Jacinto 800 J ST Unit 412 Sacramento, CA 95814	

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

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

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

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

28

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct, and that this declaration was executed on July 2, 2020, at Elk Grove, California.

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5 Melissa A. Phillips
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EXHIBIT D



Class Action Settlement Administration

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

Estimate #:	13486	Prepared By:	Kimberly Sutherland
Estimate Date:	6/21/2021	Direct Dial #	321-223-5067
		Email:	ksutherland@simpluris.com

Attorney/Client: **Eric Giersch**
Firm: SHIMODA LAW
Email: [<egiersch@shimodalaw.com>](mailto:egiersch@shimodalaw.com)

Attorney/Client: **Defense Attorney**
Firm:
Email:

Case Name: Perez v. vs. Too Infinity Management: Distribution

Not to Exceed Fee: \$3,000

Terms:

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

Total Possible Class Size:	79	Undeliverable Rate:	25%
Response Rate:	0%	Call Rate:	
Mailing Document Language:	English	Redistribution:	None
Reminder Post Card	No	States	One
Unclaimed Funds	Cy Pres		

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports			
Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$75.00	1	\$75.00
Database Manager - Initial Data Analysis	\$140.00	1	\$140.00
Total			\$215.00

Distribution

Setup a Disbursement Account			
Print & Mail Checks to Class Members- 1099's-- File Reports with Appropriate Federal & State Taxing Authorities			
Account Management & Reconciliation.			
Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	1	\$140.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Mailing Supervisor	\$50.00	2	\$100.00
NCOA	\$25.00	1	\$25.00
Print & Mail-Check, 1099/W-2/ 1- Page notice included	\$5.00	79	\$395.00
Postage	\$0.55	79	\$43.45
Process Returned Checks	\$0.50	16	\$7.90
Skip Trace Search Undeliverable Checks	\$5.00	16	\$79.00
Remail Checks	\$5.00	16	\$79.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$250.00	1	\$250.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee, 2021	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	1	\$5.00
Reissuing W2s/1099s	\$5.00	1	\$5.00
Disbursement Manager	\$125.00	1	\$125.00
Total			\$2,929.35



Class Action Settlement Administration

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

Case Wrap Up

Send Final Reports to Counsel			
Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Postage \$43.45

Total Case Costs \$3,444.35

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

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

Simpluris Security Summary – White Paper

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

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

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

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

EXHIBIT E

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

Case No. 34-2020-00285276

CHAZ PEREZ, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

TOO INFINITY MANAGEMENT, LLC, a California
Limited Liability Company; HUMBLE ROOT
INTERNATIONAL, INC., a California Corporation;
JAVIER HERNANDEZ, an individual; CHRIS
THAO, an individual; JUSTIN JACINTO, an
individual; and DOES 1 to 100, inclusive,

Defendants.

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All hourly non-exempt employees who have or continue to work for Defendants in California from July 2, 2019, to [REDACTED] (the "Aggrieved Employees").

This Notice is being provided to you to inform you of a Private Attorney General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Perez v. Too Infinity Management, LLC, et al.*, Sacramento County Superior Court, Case No. 34-2020-00285276, filed September 15, 2020 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Chaz Perez ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of himself and Aggrieved Employees. Plaintiff alleged that Humble Root International, Inc., Javier Hernandez, Chris Thao, and Justin Jacinto. ("Defendants") violated California law by 1) failing to pay minimum wages, 2) failing to provide meal periods or pay premiums in lieu thereof, 3) failing to pay final wages, 4) failing to provide accurate wage statements, 5) violating provisions regulating hours and days of work in any Industrial Welfare Commission order, 6) failing to maintain accurate time records, 7) failing to pay overtime wages, 8) failing to provide rest periods or pay premiums in lieu thereof, 9) failing to reimburse expenses, and 10) failing to provide paid sick leave. Defendants have denied all of Plaintiff's allegations. All class claims and allegations were dismissed without prejudice in connection with the Order approving the PAGA Settlement.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiff or to any other current or former employees, and Defendants do not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the Private Attorneys General Act, Cal. Lab. Code §§ 2698 *et seq.* predicated on violations of Labor Code sections 1194, 1197.1, 226.7, 512, 201-203, 256, 226, 226.3, 558, 558.1, 1174, 510, 226.7, 2802, 246, 246.5, and 248.5. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for the PAGA Settlement, Plaintiff has agreed to waive any and all liability for violation of the PAGA based on violations of the Labor Code sections above, as alleged in the Action. This waiver shall apply to all Aggrieved Employees, including you. However, the waiver does not extend to any non-PAGA claims or PAGA claims outside of those asserted in the Action, or claims arising outside of the July 2, 2019, to [REDACTED].

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$90,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$31,500, attorneys' costs in the amount of \$_____, Plaintiff enhancement payment in the amount of \$10,000, the fees and expenses of the Claims Administrator in the amount of \$_____, which will result in a "Net Settlement Amount" of \$_____ for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$_____) is being paid to the LWDA and 25% of the Net Settlement Amount (\$_____) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between July 2, 2019 to _____, and dividing that number by the number of pay periods worked for all Aggrieved Employees between July 2, 2019, to _____, and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

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

Laura C. McHugh
Samantha J. Tanner
Duggan McHugh Law Corporation
641 Fulton Avenue, Suite 100
Sacramento, CA 95825
On behalf of Defendants

EXHIBIT F

EXHIBIT G

Date	Description	Amount
7/1/2020	Payment to Court - Sacramento Defendant Search	\$1.00
7/2/2020	Payment to LWDA - PAGA Filing Fee	\$75.00
7/2/2020	Certified Mail - PAGA Letters to Employers	\$39.15
9/22/2020	Payment to Court - complaint fee	\$435.00
9/22/2020	Administration/Copy Fee - Phone, Fax, Scan, Westlaw Legal Research Fees	\$500.00
10/28/2020	AL.S Service Fee - Too Infinity Management inv 156610	\$50.00
11/3/2020	AL.S Service Fee - Proof of Service of Summons to Humble Root International, Inc.	\$90.00
11/3/2020	AL.S Service Fee - Proof of Service of Summons to Humble Root Worldwide, Inc.	\$45.00
12/10/2020	Payment to Court - Stipulation fee	\$20.00
2/4/2021	Service Fee to Court - Notice of Dissociation / Association	\$40.00
4/8/2021	Payment to Court - Stipulation Dismiss Defendants and File First Amended Complaint	\$20.00
4/8/2021	Service Fee to Court - Stipulation to dismiss defendants and file First Amended Complaint	\$40.00
4/21/2021	Service Fee to Court - Request for Dismissal	\$40.00
5/12/2021	Payment to Court - Stipulation to Amend	\$20.00
5/28/2021	Mediation	\$3,000.00
6/2/2021	Service Fee to Court - First Amended Complaint	\$40.00
6/2/2021	Payment to Court - Stipulation and Proposed Order Granting First Amended Complaint	\$20.00
6/2/2021	Service Fee to Court - Stipulation and Proposed Order Granting First Amended Complaint	\$40.00
7/19/2021	Mediation parking	\$24.00
8/3/2021	Expert Consulting Fee for Mediation	\$1,550.00
Anticipated	Service Fee to Court - PAGA Approval Motion	\$40.00
Anticipated	UPS to OC - PAGA Approval Motion	\$32.00
Anticipated	Payment to Court - PAGA Approval Motion	\$60.00
Anticipated	Service Fee to Court - Case Management Statement	\$40.00
Anticipated	Service Fee to Court - Compliance Hearing Documents	\$40.00

Total: \$6,301.15

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Jessica L. Hart (Cal. State Bar No. 331441)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff CHAZ PEREZ
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

CHAZ PEREZ, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

TOO INFINITY MANAGEMENT, LLC, a
California Limited Liability Company;
HUMBLE ROOT INTERNATIONAL, INC.,
a California Corporation; JAVIER
HERNANDEZ, an individual; CHRIS THAO,
an individual; JUSTIN JACINTO, an
individual and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00285276

CLASS ACTION

**DECLARATION OF PLAINTIFF CHAZ
PEREZ IN SUPPORT OF PLAINTIFF'S
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS CLASS
CLAIMS WITHOUT PREJUDICE**

Reservation Number: 2587212

Date: October 6, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: September 15, 2020

FAC Filed: May 18, 2021

Trial Date: None Set

I, Chaz Perez, declare:

1. I am a competent adult, I have personal knowledge of the facts set forth in this declaration, and I am making this declaration on behalf of myself, as a named Plaintiff, and in support of Plaintiff's Motion to Approve Private Attorneys General Act ("PAGA") Settlement and Dismiss Class Claims Without Prejudice.

2. I worked for Defendants Humble Root International, Inc., Javier Hernandez, Chris Thao, and Justin Jacinto ("Defendants") from approximately November 2019 to March 2020 as a non-exempt courier receiving an hourly wage. I was subject to all of Defendants' policies and practices that have been alleged as unlawful in the complaint and the notice sent to the Labor and Workforce Development Agency, including the following: failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties and failure to reimburse expenses.

3. I have actively participated in the litigation of this case. I have given a detailed account of all the facts related to my employment and the claims asserted in the Complaint. I provided extensive documentation in support of the claims brought against Defendants including paystubs, Defendants' policies, and other documents related to my work with Defendants and to the claims brought in the action. I met with and assisted my attorneys Galen T. Shimoda and Jessica L. Hart, in understanding the documents and providing context for Defendants' payroll process as it applied to me and how I believed it applied to Defendants' other employees.

4. My attorneys explained to me the risks and benefits of bringing a representative action. I understood that I took on the risk, both professionally and financially, in pursuing the case as a representative action. I understood that pursuing the case as a representative action meant that it would take substantially longer than pursuing a claim with the California Labor Commissioner and that I risked getting nothing in the end, but I believed it was important to make sure that Defendants followed the law for everyone.

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

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

8 6. I have reviewed the final Private Attorneys General Act Settlement, discussed the terms
9 with my attorney, and asked my attorney any questions I had. I believe the settlement terms and
10 allocations are fair and reasonable given the facts of the case.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct. Executed this 7th day of September 2021 in Sacramento, California.

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16 Chaz Perez
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Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Jessica L. Hart (Cal. State Bar No. 331441)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
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Telephone: (916) 525-0716
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Attorneys for Plaintiff CHAZ PEREZ
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

CHAZ PEREZ, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

TOO INFINITY MANAGEMENT, LLC, a
California Limited Liability Company;
HUMBLE ROOT INTERNATIONAL, INC.,
a California Corporation; JAVIER
HERNANDEZ, an individual; CHRIS THAO,
an individual; JUSTIN JACINTO, an
individual and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00285276

CLASS ACTION

**DECLARATION OF GALEN T. SHIMODA
IN SUPPORT OF MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS CLASS
CLAIMS WITHOUT PREJUDICE**

Reservation Number: 2587212

Date: October 6, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: September 15, 2020

FAC Filed: May 18, 2021

Trial Date: None Set

1 I, Galen T. Shimoda, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Chaz Perez ("Plaintiff") herein. I am making this
4 declaration on behalf of Plaintiff, and in support of Plaintiff's Motion to Approve Private Attorneys
5 General Act Settlement and Dismiss Class Claims Without Prejudice. A true and correct copy of the
6 Private Attorneys General Act Settlement is being filed with this Motion as Exhibit A.

7 2. This case was brought as a Private Attorneys General Act lawsuit based on Plaintiff's
8 contention that Defendants Humble Root International, Inc., Javier Hernandez, Chris Thao, and Justin
9 Jacinto ("Defendants") failed to pay overtime wages, failed to pay minimum wages, failed to provide
10 meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed to pay
11 final wages, failed to reimburse employees for expenses, violated provisions regulating hours and days
12 of work in any Industrial Welfare Commission order, failed to maintain accurate records, and failed to
13 provide paid sick leave. These violations primarily stem from Plaintiff's allegations that Defendants
14 violated California law by 1) failing to pay minimum wages; 2) failing to provide meal periods or
15 premiums in lieu thereof; 3) failing to pay final wages; 4) failing to provide accurate wage statements;
16 5) violating provisions regulating hours and days of work in any Industrial Welfare Commission order;
17 6) failing to maintain accurate time records; 7) failing to pay overtime wages; 8) failing to provide rest
18 periods or premiums in lieu thereof; 9) failing to reimburse expenses; and 10) failing to provide paid
19 sick leave. Plaintiff is the only named Plaintiff in this matter. From our initial investigations of
20 Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
21 PAGA action. Plaintiff filed the original complaint on September 15, 2020. Plaintiff exhausted
22 administrative remedies through the Labor and Workforce Development Agency ("LWDA") prior to
23 filing the Complaint in order to pursue penalties under the PAGA. Plaintiff filed a notice with the
24 LWDA on July 2, 2020, setting forth the facts and theories of liability. A true and correct copy of the
25 notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also
26 sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time.
27 There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's
28 notice. As such, Plaintiff became authorized to commence a civil action under the PAGA. A copy of

1 the Complaint was uploaded to the LWDA shortly thereafter on June 22, 2021, after we received a file
2 stamped copy back from Court. A true and correct copy of Plaintiff's operative Complaint is being
3 filed with this Motion as Exhibit B. Currently, there is no trial date set in this matter.

4 3. Because the settlement is a PAGA only settlement, no certification procedures have or
5 need to occur in the context of approving the Agreement pursuant to *Arias v. Superior Court*, 46
6 Cal.4th 969 (2009) and Labor Code section 2699(1)(2). Although the operative complaint does have
7 class allegations within it, we are seeking the dismissal of class claims and allegations without
8 prejudice as part of this motion. The settlement notice being provided to employees within the PAGA
9 settlement identifies the scope of the settlement and that no other claims, class or otherwise, are being
10 compromised as part of the settlement.

11 4. Defendant is represented in this matter by Laura C. McHugh and Samantha J. Tanner of
12 Duggan McHugh Law Corporation. From the beginning, Defendants have contested the merits of this
13 case, the manageability of the case at trial, and Plaintiff's ability to prove a violation in each pay period
14 for each employee among other defenses and contentions they made challenging the propriety of this
15 action. Defendants further contended that, even assuming there was a finding supporting the
16 imposition of PAGA penalties, the Court would likely exercise its discretion to substantially reduce any
17 such penalties owed based on evidence of good faith attempts to comply with Labor Code obligations
18 by Defendants. Notwithstanding its agreement to settle this matter, Defendants believe the practices
19 Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully comply with
20 all state and federal employment laws with respect to Plaintiff and Aggrieved Employees.

21 5. Based on the expected testimony from Plaintiff and Aggrieved Employees, a review of
22 Defendants' policies and procedures and other documents relating to the alleged claims, information on
23 the number of Aggrieved Employees, Aggrieved Employees' dates of employment, and a representative
24 sample of Aggrieved Employees' payroll data, the scope of the potential penalties at issue in light of the
25 claims alleged, the Court's statutorily authorized discretion to reduce any penalties assessed, and the
26 negotiations that have taken place, I am convinced that the proposed settlement is in the best interest of
27 the Plaintiff, Aggrieved Employees affected by the Agreement and the LWDA. The length and risks of
28 trial and other normal perils of complex litigation that impact the value of the claims were also

1 considered and weighed in reaching the proposed settlement. These risks were also exacerbated in this
2 case in that there are numerous Aggrieved Employees that would require litigating the existence of
3 violations as to each in each pay period that they worked. In addition, I carefully considered the
4 difficulties of complex litigation, and the lengthy process of establishing specific damages and various
5 possible delays and appeals in agreeing to the proposed settlement. I further considered the fact that
6 penalties under the PAGA could be substantially cut at the discretion of the Court even if Plaintiff was
7 successful on proving those claims and there was risk that a Court could find no willfulness in the failure
8 to pay wages at separation, which would eliminate the value of the waiting time penalty entirely.
9 Furthermore, Defendants' provided substantial financial information and documents and I questioned
10 individual owners regarding Defendants' claims of financial distress. After reviewing tax returns, other
11 relevant financial documents, and questioning the owners about their ability to pay the cost of continued
12 litigation or judgment if we were successful on the claims at trial, I believe the value of the PAGA
13 settlement and the dismissal of the class claims and allegations without prejudice is good outcome for
14 the class. In addition to receiving some payment as part of their share of the aggrieved employee
15 allocation, the individual claims of each putative class member will be preserved such that they could
16 still pursue those claims on an individual basis if they so choose. Doing this allowed the PAGA
17 settlement to reach a more reasonable value compared to the potential PAGA exposure without causing
18 a compromise of putative class members individual claims that was too extreme, in my view, compared
19 to the potential exposure of the class claims. Overall, I believe it is more beneficial to secure a
20 guaranteed benefit to Plaintiff, Aggrieved Employees, and the LWDA now rather than to proceed with
21 litigation and potentially obtain zero funds due to legal, factual, or financial distress issues.

22 6. My office, including my associate, Jessica L. Hart, Esq., my paralegals, and myself,
23 along with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages
24 for such claims. The parties engaged in informal discovery and exchange of documents, including a
25 representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies
26 for the entirety of the statute of limitations applicable to the PAGA claims. The discovery covered all
27 aspects of the asserted claims, including merits issues, damages, the scope and configuration of
28 Aggrieved Employees, the content and implementation of the wage and hour policies at issue, issues

1 relating to manageability concerns at trial, among other relevant areas. From this production we were
2 able to determine information critical to a reliable damages analysis such as the average hourly rate,
3 average daily hours worked, average number of pay periods that had potential violations based on the
4 asserted claims, and the number for former employees. This information allowed my office to assess
5 both liability and damages and create an accurate damages model. Plaintiff assisted in all aspects of this
6 litigation including providing factual information relating to Defendants' employment conditions,
7 potential witness information, and answered questions regarding Defendants' factual contentions in this
8 matter. This was important because it is directly related to our ability to maintain this case as a PAGA
9 action under manageability concerns and our ability to obtain a favorable settlement for the PAGA
10 claims.

11 7. Throughout this litigation our office had numerous communications with Defendants'
12 Counsel discussing our respective positions. The parties engaged in mediation on June 28, 2021, using
13 an experienced mediator, David Perrault. It was only after approximately fourteen (14) months of
14 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
15 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
16 professional in nature.

17 8. The parties reviewed and analyzed substantial amounts of data regarding the PAGA
18 claims. Based on our analysis and review of all relevant documents and Aggrieved Employee
19 information, I have determined that the likely damages for the asserted PAGA claims is approximately
20 \$1,190,750 based on the counts alleged to the LWDA and the Aggrieved Employee data. Based on our
21 research, we did not find any prior Labor Commissioner or court decisions that stated Defendants'
22 practices and/or policies were improper. As such, a "subsequent violation" may not be found for penalty
23 calculation purposes and the exposure analysis here is based on an "initial violation" valuation being
24 adopted by any fact finder if this matter went to trial.

25 9. I believe the PAGA penalties in this case may be reduced however due to the fact that
26 much of the penalties are based on violations due to technical non-compliance with the Labor Code as
27 opposed to substantive wage loss or other more egregious forms of wage and hour violations such as
28 the wholesale failure of any attempt to comply or intentional non-compliance with Labor Code

obligations. Furthermore, Defendants produced a substantial number of documents that a Court may find demonstrates a good faith attempt at compliance that merits the reduction of civil penalties. The statutorily authorized discretion that Courts have used to reduce penalties ranges substantially. *See, e.g., Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Thus, it is more likely that the civil penalties would be cut somewhere in the range of approximately \$214,335 (82% reduction) to \$833,525 (30% reduction). Taking this into account, Plaintiff's gross recovery under the \$90,000 PAGA settlement equals approximately 10.8% to 42% of the total available civil penalties. After reduction of the allocated attorneys' fees and costs, Plaintiff's enhancement payment, and settlement administrator fees, the net recovery of penalties is approximately \$35,000, which equals approximately 4.2% to 16.3% of the total available civil penalties. I believe the Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this case as well as Defendants financial condition and ability to pay.

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

11. My law firm is a boutique law practice that focuses primarily in employment litigation, emphasizing wage and hour litigation. I graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. I then attended and graduated from the University of the Pacific, McGeorge School of Law and received my J.D. degree in 2003. I graduated from McGeorge in the top 5% of my class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, I have authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website.

1 12. I have been a regular panel speaker for the CEB (Continuing Education of the Bar)
2 Employment Review seminars from 2014 to the present. My speaking engagements include the
3 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
4 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
5 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
6 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
7 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
8 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
9 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
10 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
11 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
12 Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance
13 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
14 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
15 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
16 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
17 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
18 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
19 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
20 Venue Roundup (May 17, 2019). I have been AV rated by Martindale Hubbell since 2013, was
21 recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a
22 Super Lawyer from 2014 to present.

23 13. I have practiced law in California since being admitted to the State Bar in 2003,
24 litigating wage and hour class actions and individual wage and hour litigation among other cases. I
25 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.
26 I then switched to plaintiff class action work in 2005. My class action experience is in wage and hour
27 law. I have litigated several class action cases in California State and Federal Courts, including up to
28 certification, settlement, preliminary and final approval, and disbursement of monies, and have been

found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)

- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);

- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

15. My associate, Jessica L. Hart, Esq., also worked with me on this matter with me and was critical in assisting with all aspects of the litigation of this case. Ms. Hart graduated from University of California Davis School of Law. Prior to joining Shimoda Law Corp., Ms. Hart worked alongside a number of attorneys in the Sacramento area focusing almost exclusively on plaintiff's side litigation and employment law. Since joining my firm, Ms. Hart has worked on a variety of individual, class action, and Private Attorneys General Act cases involving wage and hour claims. As an associate, some of the class action and/or PAGA cases Ms. Hart is litigating and/or has litigated as co-counsel include the following:

- *Afoa v. Milestone Retirement Communities, LLC., et al.*, Case No. 34-2020-00282555 (Sac. Sup. Ct.);
- *Cota v. Milestone Management (CA) – Meadows, LLC.*, Case No. 34-2020-00280648 (Sac. Sup. Ct.);

- *Coy v. Southern Home Care Services, Inc., et al.*, Case. No. 2:21-CV-00067-JAM-CKD (E.D. Cal.);
- *Dreyer v. Automation Anywhere, Inc.* Case. No 20CV372730 (Santa Clara Sup. Ct.);
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Fang v. Interpress Technologies, Inc.* Case. No. 34-2021-00292937 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Hawkins v. Twitch Interactive, Inc.*, Case No. 34-2020-00281761 (Sac. Sup. Ct.);
- *Hudson v. Stockton Nursing and Rehab Center, LLC.*, Case No. STK-CV-UOE-2020-0008507 (San Joaquin Sup. Ct.);
- *Hussaini v. Integrated Resources, Inc, et al.*, Case. No. 34-2021-00297152 (Sac. Sup. Ct.);
- *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation, et al.*, Case. No.34-2020-00290072 (Sac. Sup. Ct.);
- *Leon v Golden Bay Fence Plus Iron Works, Inc., et al.*, Case No. STK-CV-UOE-2021-0000543 (San Joaquin Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Madrigal Vargas v. Mary Ann's Baking Co., Inc.*, Case No. 2:21-CV-00320-JAM-JDP (E.D. Cal.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Whiteside v. SPSG Partners, et al.*, Case. No. 2:20-cv-01643-TLN-DMC (Sac. Sup. Ct.);
- *Valentin v Sacramento Laundry Company, Inc.*, Case No. 34-2019-00270987(Sac. Sup. Ct); and
- *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.).

1 16. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
2 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
3 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Grauly*,
4 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an identifiable benefit
5 on behalf of Aggrieved Employees and the LWDA and equity counsels that the cost of the
6 representation should be born equally amongst all who are receiving these benefits. The settlement
7 recovery provides an excellent result and is the product of substantial time and effort in analyzing the
8 facts and law applicable to this case. I agreed to take this case on a contingency and as a representative
9 action with the possibility that I would not receive any compensation for my time and efforts due to
10 issues regarding the merits and have carried that risk over the course of this case. I have reviewed fee
11 arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five
12 percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in
13 employment law cases, the typical percentage negotiated between parties ranges from thirty-five to forty
14 percent (35% to 40%) in individual litigation. In class action and PAGA litigation, my experience in my
15 own firm and working with several other firms has been that the typical percentage negotiated between
16 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same
17 factors. I have also reviewed several recent Federal District Court Cases where the Court has approved
18 common fund-based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp.
19 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-
20 cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green*,
21 *et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al.*
22 *v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC
23 Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern
24 District, Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and Authorities.
25 I believe my request of \$31,500 (approximately 35%) for attorneys' fees is justified given the results
26 obtained on behalf of Aggrieved Employees and the LWDA. Moreover, at this time, my firm has
27 advanced all costs for Plaintiff and Aggrieved Employees and has not received any compensation
28 whatsoever for our time expended in this case. The incurred costs to date and the expected costs

1 through overseeing the complete distribution of all settlement proceeds are \$6,301.15. Attached as
2 Exhibit G is a true and correct copy of an itemization of our firm's incurred costs and expected costs
3 through the complete distribution of all settlement proceeds.

4 17. I have used several settlement administrator companies in the wage and hour class
5 actions and PAGA actions I have resolved in the past and believe Simpluris, Inc. will provide the best
6 service to administer the proposed class settlement. A true and correct copy of a cost estimate provided
7 by Simpluris, Inc. is filed with this Motion as Exhibit D. Any difference in the actual costs and the
8 allocated amounts to cover costs will be redistributed to similarly situated employees pro rata per the
9 terms of the settlement.

10 18. A copy of the proposed Settlement Agreement and the entire Motion to Approve the
11 PAGA Settlement was submitted to the LWDA at the same time the Motion was submitted to the Court
12 pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents
13 demonstrating the settlement documents were provided to the LWDA and that the LWDA has
14 confirmed receipt are being filed with this Motion as Exhibit F.

15 19. A true and correct copy of the proposed Notice of Settlement to be distributed to
16 similarly situated employees informing them of the settlement and all material terms is being filed with
17 this Motion as Exhibit E.

18 20. Pursuant to California Rules of Court, Rule 3.770, no consideration, direct or indirect, is
19 being paid by to my firm or my client, or otherwise, for the dismissal of the class claims and allegations
20 without prejudice as those claims are not being waived or prejudiced by the proposed PAGA
21 settlement. The proposed settlement is explicit in that the waived claims are only claims under the
22 PAGA based on the Labor Code statutes specifically cited in the release section. As stated above, the
23 dismissal of the class claims is a result of my review of Defendants' financial documents and
24 questioning Defendants' owners regarding finances relating to their financial distress claims. I do not
25 believe Defendants' finances can support a larger payment and including class claims in any release for
26 the \$90,000.00 settlement payment available was, in my mind, too large of a compromise for individual
27 employees' personal claims. For these reasons, I am seeking dismissal of the class claims and
28 allegations without prejudice in connection with the approval of the PAGA settlement.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 3rd day of September, 2021 in Sacramento, California.

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5 _____
6 Galen T. Shimoda
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Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiff CHAZ PEREZ
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

CHAZ PEREZ, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

TOO INFINITY MANAGEMENT, LLC, a
California Limited Liability Company;
HUMBLE ROOT INTERNATIONAL, INC.,
a California Corporation; JAVIER
HERNANDEZ, an individual; CHRIS THAO,
an individual; JUSTIN JACINTO, an
individual and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00285276

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS CLASS
CLAIMS WITHOUT PREJUDICE**

Reservation Number: 2587212

Date: October 6, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: September 15, 2020

FAC Filed: May 18, 2021

Trial Date: None Set

1
2 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

3 The Motion to Approve Private Attorneys General Act Settlement and Dismiss Class Claims
4 Without Prejudice (“Motion”) in the above referenced case came before this Court, on October 6, 2021
5 at 9:00 a.m., in Department 54 before Christopher E. Krueger, presiding. Plaintiff Chaz Perez
6 (“Plaintiff”) filed this Private Attorneys General Act (“PAGA”) action on September 15, 2020. The
7 operative Complaint alleges that Humble Root International, Inc., Javier Hernandez, Chris Thao, and
8 Justin Jacinto (“Defendants”) violated Labor Code §§ 510, 1194, IWC Wage Order 7, § 3 (failure to pay
9 overtime wages); Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (failure to pay minimum
10 wages); Labor Code §§ 226.7, 512 and Wage Order No. 7, §§ 11(A) and 11(B) (failure to provide meal
11 periods or pay premiums in lieu thereof); Labor Code § 226.7 and Wage Order No. 7, § 12(A) (failure
12 to provide rest periods or pay premiums in lieu thereof); Labor Code §§ 226, 226.3 (failure to provide
13 accurate wage statements); Labor Code §§ 201-203, 256 (failure to pay final wages); Labor Code § 2802
14 (failure to pay reimbursements for expenses); Labor Code §§ 558, 558.1 (provisions regulating hours
15 and days of work in any Industrial Welfare Commission Order); Labor Code §§ 226.3, 1174 (failure to
16 maintain accurate records); and Labor Code §§ 246, 246.5, 248.5 (failure to provide paid sick leave).
17 Although the operative Complaint includes class allegations, Plaintiff’s Motion seeks to dismiss those
18 class claims and allegations without prejudice as part of the settlement approval. The Complaint alleges
19 that Defendants are liable for civil penalties under the PAGA as a result of the alleged violations.
20 Defendants have denied all of Plaintiff’s allegations. Plaintiff sought attorneys’ fees and costs as part of
21 this Action.

22 The parties have agreed to a settlement of the PAGA claims. Defendants will provide monetary
23 consideration in exchange for a release of claims and dismissal consistent with the terms of the Private
24 Attorneys General Act Settlement (“Agreement”). Any capitalized terms herein shall have the same
25 meaning as set forth in the Agreement. The Court, having received and considered Plaintiff’s Motion,
26 the declarations in support, the Agreement, the Notice of Settlement, and other evidence, HEREBY
27 ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

28 //

1 **1. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
2 **EMPLOYEES**

3 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
4 PAGA claims asserted in this litigation and is authorized to act as a private attorney general with respect
5 to the PAGA claims being released under the proposed Agreement. The Court finds the scope of
6 individuals within the scope of the Agreement, its releases, and all rights and obligations thereunder
7 include the following:

8 All of Defendants’ hourly non-exempt employees who have or continue to
9 work for Defendants in California from July 2, 2019, to the date a signed
order approving the Agreement has been filed with the court.

10 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
11 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
12 the Agreement.

13 **2. APPROVING THE AGREEMENT**

14 The Court has reviewed the Agreement, which was submitted with Plaintiff’s Motion as Exhibit
15 A. The Court finds that the Agreement is fair, reasonable, and adequate and approved as required under
16 California Labor Code section 2698, *et seq.* Based on the amount of penalties at issue, the risk of loss
17 on the merits, the risk of being able to prove violations in each pay period as to each individual as
18 required by statute for damages purposes, and the Court’s statutorily authorized power to reduce
19 penalties, the Agreement represents a substantial recovery for Aggrieved Employees and the Labor and
20 Workforce Development Agency (“LWDA”) to further its purpose in enforcing the Labor Code. The
21 Court also finds that the Agreement provides a recovery that creates an effective, substantial deterrent to
22 any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

23 The Court approves of the PAGA penalty allocations set forth in the Agreement, wherein 75% of
24 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
25 paid to Aggrieved Employees as civil penalties pursuant to Labor Code section 2699(i).

26 Additionally, because the Court finds the Parties’ settlement to have been agreed upon only after
27 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays
28

1 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by
2 reference in its entirety, as if stated here in full, including the \$90,000 Gross Settlement Amount.

3 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
4 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved Employees and the
5 LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's
6 counsel were able to negotiate on behalf of Aggrieved Employees and the LWDA, and the fee can be
7 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the
8 Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir.
9 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th
10 480, 506 (2016). The Court finds the attorneys' fees request of thirty-five percent (35%) of the Gross
11 Settlement Amount, *i.e.* \$31,500, to be appropriate compensation for Plaintiff's counsel. The attorneys'
12 fees request is within the range that has been approved by other Courts in similar cases and is reasonable
13 in light of the circumstances of this case, the substantial and beneficial results obtained on behalf of
14 Aggrieved Employees and the LWDA, and the contingent nature of the recovery over the course of this
15 case, which included potential loss at summary judgment and/or trial proceedings. Additionally, the
16 Court orders that Plaintiff shall be awarded reasonable costs in the amount of \$6,301.15. Any
17 difference between the actual costs and the approved allocation for costs will be added to the Net
18 Settlement Amount for distribution between the LWDA and Aggrieved Employees.

19 The Court orders that Plaintiff Chaz Perez will receive \$10,000 as a PAGA Representative
20 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
21 rata distribution formula for Plaintiff's time and effort on behalf of Aggrieved Employees and the
22 LWDA.

23 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
24 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
25 \$3,500. Any difference between the actual cost of the Claims Administrator and the approved payment
26 will be added to the Net Settlement Amount for distribution between the LWDA and Aggrieved
27 Employees.
28

1 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
2 Aggrieved Employees that are not cashed by the deadline to do so shall be paid out to the Center for
3 Workers Rights.

4 The releases and waivers for Aggrieved Employees are also approved by the Court as set forth in
5 the Agreement.

6 **3. APPROVAL OF THE NOTICE OF SETTLEMENT**

7 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
8 Exhibit E, fairly and adequately advised Aggrieved Employees about the Agreement and its effect. The
9 Court further finds that the Notice of Settlement and distribution of such notice by first class mail to
10 each identified Aggrieved Employees at his or her most recent address based on a National Change of
11 Address database search from the Aggrieved Employees' last known address and a skip trace on any
12 Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address"
13 comported with all constitutional requirements, including those of due process. Because the notice also
14 specifically states that there is no waiver of class claims under the Agreement, no separate notice
15 regarding the dismissal of class claims under California Rules of Court, Rule 3.770.

16 The Court also finds that because there is a strong interest in providing Aggrieved Employees the
17 opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to
18 privacy rights, the sharing of employment information, including social security numbers, is not a
19 serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last
20 name, last known mailing address, social security number, hire and termination dates for pay period
21 calculations to the Claims Administrator only, and not to Plaintiff or Plaintiff's Counsel, in order to
22 process this settlement as contemplated within the Agreement and approved by this Order. The Claims
23 Administrator shall only use this information for settlement purposes identified herein, and this
24 information shall be kept confidential, not be shared with any third-party, and used only to administer
25 the settlement.

26 **4. IMPLEMENTATION SCHEDULE**

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

Last day for Defendants to provide Claims Administrator with Aggrieved Employee information	Within 21 calendar days after Final Approval Date
Last day for Defendants to fund Gross Settlement Amount	Within 10 days after a signed order has been filed approving the Settlement Agreement or September 1, 2021, whichever is later
Last day for Claims Administrator to calculate and report to Parties the amounts owed to fund settlement, Net Settlement Amount, and Claim Amounts for Aggrieved Employees	Within 14 calendar days of receiving Aggrieved Employee information
Last day for Claims Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	On the Effective Date
Last day for Claims Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Plaintiff's Enhancement Payment, Claims Administrator Costs, and payment to Aggrieved Employees	On the Effective Date
Last day for Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiary	Within 14 days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

1 IT IS FURTHER ORDERED that the class claims and allegations be dismissed without
2 prejudice. The remaining claims, including the PAGA claims, and the action as a whole, shall be
3 dismissed with prejudice with each party to bear its own fees and costs outside of what has been ordered
4 herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of
5 this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6. The
6 prevailing party in any action to enforce the terms of the Agreement shall be entitled to reasonable
7 attorneys' fees and costs. The Parties agree to meet and confer in good faith to resolve any issue before
8 any such motion for attorney's fees and costs is filed.

9 IT IS SO ORDERED.

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11 Date: _____

By: _____

12 Judge of the Superior Court
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