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6 Attorneys for Plaintiff YAMZIN GONZALEZ,
7 individually, and on behalf of all others similarly
situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **CENTRAL DISTRICT — SPRING STREET COURTHOUSE**

11 YAMZIN GONZALEZ, individually, and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 BRANDED ONLINE, INC., a Delaware
16 Corporation; and DOES 1 through 100,
inclusive.

17 Defendants.

Case No.: 20STCV29702

*[Assigned for all purposes to the Hon. Maren
Nelson, Dept. 17]*

COMPLEX CLASS ACTION

**DECLARATION OF TARAS KICK IN
SUPPORT OF UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT**

Date: August 31, 2023
Time: 9:00 a.m.
Dept: 17

Complaint filed: August 5, 2020
FAC filed: October 27, 2020
Trial date: None set

1 I, Taras Kick, declare:

2 1. I am an attorney licensed to practice before all courts of the State of California and a
3 shareholder with The Kick Law Firm, APC. The following is based on my personal knowledge, and, if
4 called as a witness, I could and would testify competently thereto.

5 2. I have been a member of the California State Bar since 1989, the year I graduated from the
6 University of Pennsylvania Law School. Prior to that, in 1986, I graduated from Swarthmore College,
7 from which I earned a Bachelor of Arts degree in Economics and Psychology. I have served as class
8 counsel in numerous national and California state class actions, including being appointed lead counsel
9 and a member of plaintiffs' executive committees. From 2012 to September 2017, I was a Commissioner
10 of the California Law Revision Commission, an independent state agency created by statute in 1953 to
11 assist the Legislature and Governor by examining California law and recommending needed reforms,
12 having been appointed by Governor Edmund G. Brown Jr. in 2012, and was Chairperson of the
13 Commission from September 2015 through September 2016 (although my role in this case is independent
14 of any aspect of my duties with the Commission and does not reflect one way or the other any positions
15 of the Commission). For over five years I was a member of the national Board of Directors of Public
16 Justice, including its Class Action Preservation Committee. I am or have been a member of numerous
17 other committees pertaining to consumer class actions, including the American Association for Justice
18 Class Action Litigation Sub-Group; the Consumer Attorneys of California Class Action Group; the
19 American Bar Association Committee on Class Actions & Derivative Suits; and, the State Bar of
20 California Antitrust and Unfair Competition Litigation section. The Kick Law Firm, APC primarily
21 represents plaintiffs in wage and hour and consumer class actions.

22 3. The class action cases in which this firm has been appointed either as lead counsel, or as
23 co-lead counsel, include the following: *Eaton v. Cavalia (USA) Inc., et al.*, San Francisco County Superior
24 Court, Case No. CGC-19-579421, assigned to Richard B. Ulmer (class and representative PAGA action,
25 final approval granted November 21, 2022); *Johnson v. Randy Taylor Consulting, LLC, et al.*, Los Angeles
26 County Superior Court Case No. 21SMCV00156, assigned to Hon. Helen Zukin, SSC-207 (class and
27 representative PAGA action, final approval granted November 2, 2022); *In Re Southern California Gas*

1 *Leak Cases*, Judicial Council Coordinated Proceeding No. 4861, assigned to Hon. Daniel J. Buckley,
2 Coordination Trial Judge, Dept. SSC-1 (co-lead counsel and member of the class action steering
3 committee, final approval granted April 29, 2022); *Samano v. Deleons Transport Inc.*, Los Angeles
4 County Superior Court, Case No. 19STCV44589, assigned for all purposes to Hon. Elihu M. Berle (class
5 and representative PAGA action; final approval granted January 22, 2022); *Johnson, et al., v. Angel View*,
6 San Bernardino County Superior Court, Case No. CIVDS1935378 (class and representative PAGA action;
7 final approval granted November 18, 2021); *Imperial Wage And Hour Cases*, San Bernardino County
8 Superior Court, Case No. JCPDS5130 (class and representative PAGA action; final approval granted
9 November 2, 2021); *Metzke v. Thermo Fisher Scientific, Inc.*, San Francisco County Superior Court, Case
10 No. CGC-19-581914 (class and representative PAGA action; final approval granted October 28, 2021);
11 *Story v. SEFCU*, United States District Court for the Northern District of New York, Case No. 1:18-cv-
12 00764 (an overdraft fee class action, final approval granted on February 25, 2021); *Daves, et al. v.*
13 *Amadeus Waterawys, Inc.*, Los Angeles County Superior Court, Case No. 19STCV25203, assigned for all
14 purposes to Hon. Ann I. Jones (wage & hour class action; final approval granted January 8, 2021); *Smith*
15 *v. Bank of Hawaii*, United States District Court for the District of Hawaii, Case No. 1:16-cv-00513 (an
16 overdraft fee class action, final approval granted on December 22, 2020); *Coleman-Weathersbee v.*
17 *Michigan State University Federal Credit Union*, United States District Court for the Eastern District of
18 Michigan, Case No. 2:19-cv-11674 (an overdraft fee class action, final approval granted on July 29, 2020);
19 *Walker v. People's United Bank*, United States District Court for the District of Connecticut, Case No.
20 3:17-cv-00304 (an overdraft fee class action, final approval granted on June 29, 2020); *Salls v. Digital*
21 *Federal Credit Union*, United States District Court for the District of Massachusetts, Case. No. 18-cv-
22 11262-TSH (an overdraft fee class action, final approval granted in January 2020); *Pingston-Poling v.*
23 *Advia Credit Union*, United States District Court for the Western District of Michigan, Case No. 1:15-
24 CV-1208 (an overdraft fee class action, final approval granted in January 2020); *Lloyd v. Navy Federal*
25 *Credit Union*, United States District Court for the Southern District of California, Case No. 3:17-cv-01280
26 (an overdraft fee class action, final approval granted May 18, 2019); *Ketner v. SECU Maryland*, Civil
27 No.:1:15-CV-03594-CCB (D. MD. 2017) (an overdraft fee class action, final approval granted January

11, 2018); *Towner v. 1st MidAmerica Credit Union*, No. 3:15-cv-1162 (S.D. Ill. 2017) (an overdraft fee class action, final approval granted in November 2017); *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 (M.D. La. 2017) (an overdraft fee class action, final approval granted in August 2017); *Fry v. MidFlorida Credit Union*, United States District Court for the Middle District of Florida, Case No. 8:15-CV-2743 (an overdraft fee class action, final approval granted); *Ramirez v. Baxter Credit Union*, United States District Court for the Northern District of California, Case No. 16-cv-03765-SI (an overdraft fee class action, final approval granted); *Lynch v. San Diego County Credit Union*, San Diego County Superior Court, Case No. 37-2015-00008551 (an overdraft fee class action, final approval granted); *Gunter v. United Federal Credit Union*, United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC (an overdraft fee class action, final approval granted); *Hernandez v. Point Loma Credit Union*, San Diego County Superior Court, Case No. 37-2013-00053519 (an overdraft fee class action, final approval granted); *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior Court, Case No. BC625500 (an overdraft fee class action, final approval granted in); *Morales v. Kern Schools Federal Credit Union*, Kern County Superior Court, Case No. BCV-15-100538 (an overdraft fee class action, final approval granted in June 2017); *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior Court, Case No. 34-2013-00142667 (an overdraft fee class action, final approval granted); *Casey v. Orange County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC (an overdraft fee class action, final approval granted); *Sewell v. Wescom Credit Union*, Los Angeles County Superior Court No. BC5860 (an overdraft fee class action, final approval granted); *Fernandez v. Altura Credit Union*, Riverside County Superior Court, Case No. RIC1610873 (an overdraft fee class action, final approval granted); *Hernandez v. Logix Federal Credit Union*, Los Angeles County Superior Court, Case No. BC628495 (an overdraft fee class action, final approval granted); *Bowens v. Mazuma Federal Credit Union*, United States District Court for the Western District of Missouri, Case No. 15-00758-CV-W-BP (an overdraft fee class action, final approval granted); *Santiago v. Meriwest Credit Union*, Sacramento County Superior Court, Case No. 34-2015-00183730 (an overdraft fee class action, final approval granted); *Howard v. Sage Software*, Los Angeles County Superior Court Case No. BC487140 (final approval granted); *Kirtley v. Wadekar*, United States District Court for the

1 District of New Jersey, Case No. 05-5383 (final approval granted); *Pereyra v. Mike Campbell &*
2 *Associates*, Los Angeles County Superior Court Case No. BC365631 (final approval granted); *Alston v.*
3 *Pacific Bell*, Los Angeles County Superior Court Case No. BC297863 (final approval granted); *Oshaben*
4 *v. Monster Worldwide, Inc.*, et al., San Francisco County Superior Court Case No. CGC-06-454538 (final
5 approval granted); *Cole v. T-Mobile USA, et al.*, Central District of California Case No. 06-6649 (final
6 approval granted).

7 4. Other attorneys at The Kick Law Firm, APC (“TKLF”) who worked on this matter include
8 Karen Wallace, who was admitted to the California Bar in 2010 and who since then has practiced
9 substantially in plaintiffs’ employment and consumer cases; Roy Suh, who was admitted to the California
10 Bar in 2012 and since then has practiced exclusively in plaintiffs’ employment and consumer cases and is
11 very experienced in California wage and hour class action litigation; and, Greg Taylor, a 2016 graduate
12 of UCLA School of Law who represented plaintiffs in employment actions for approximately five years
13 before joining TKLF in 2022.

14 5. My hourly rate is \$900 an hour and has been approved by multiple courts across the
15 country, including recently in *In Re Southern California Gas Leak Cases*, Judicial Council Coordinated
16 Proceeding No. 4861, assigned to Hon. Daniel J. Buckley, Coordination Trial Judge, Dept. SSC-1;
17 *Johnson v. Randy Taylor Consulting, LLC, et al.*, Los Angeles County Superior Court Case No.
18 21SMCV00156, assigned to Hon. Helen Zukin, Dept. SSC-207; and, *Eaton v. Cavalia (USA) Inc., et al.*,
19 San Francisco County Superior Court, Case No. CGC-19-579421, assigned to Richard B. Ulmer (lead
20 counsel for the class; final approval granted November 21, 2022). The other attorneys being included in
21 the firm’s lodestar have also been approved at the rates being presented in this motion.

22 6. To date, the lodestar of The Kick Law Firm, APC, in this matter is approximately \$445,790
23 with a total of 660 hours expended by TKLF. This includes 65.6 hours being billed by me at the rate of
24 \$900 per hour; 146.5 hours for attorney Roy Suh; 349.7 hours billed by Karen Wallace; and, 98.8 hours
25 for attorney Greg Taylor, all at \$650 per hour. However, this firm will be restricting its fee request to
26 \$266,667, which is one-third of the GSA, despite the substantial risk and work on the case.

7. The hours and corresponding rates for each attorney at The Kick Law Firm, APC, including a reduction of hours for business judgment reasons, are broken down as follows:

Name	Hours	Rate	Total
Taras Kick	\$900	65.6	\$59,040.00
Roy Suh	\$650	146.5	\$95,225.00
Karen Wallace	\$650	349.7	\$227,305.00
Greg Taylor	\$650	98.8	\$64,220.00
TOTAL			\$445,790.00

8. For business judgment, including continuity, I deleted the hours entirely of one attorney who had worked on the case, and also reduced my hours. Further, the hours of non-attorney staff at TKLF who worked on this matter, including in a paralegal capacity, also are not being billed. Additionally, and based on past experience, I know I personally will incur additional time in connection with this matter, including preparing for and appearing at the final approval hearing; post-final approval document review; potentially fielding questions from class members; and, working with the settlement administrator.

9. Paragraphs 9 through 22 describe the work done by attorneys at The Kick Law Firm, APC leading up to the present. First, prior to the filing of the complaint, there was initial investigation of the claims alleged; extensive legal research conducted regarding Defendant's potential liability and defenses; and communications with the class representative Yamzin Gonzalez before filing the complaint, including working with Ms. Gonzalez to gather documents and information.

10. On July 15, 2020, Plaintiff submitted a PAGA Notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant, Case No. LWDA-CM-797143-20, pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), alleging Defendant violated various provisions of the California Labor Code and IWC Wage Orders. Attached as **Exhibit 2** is a true and correct copy of Plaintiff's LWDA Notice, dated July 15, 2020.

11. On August 5, 2020, Plaintiff filed the initial complaint on behalf of herself and others similarly situated to recover damages and penalties for the Labor Code violations alleged against Defendant (the "Action"). Plaintiff alleged further that these violations constituted unfair and unlawful business practices under Bus. & Prof. Code § 17200, *et seq.* ("UCL"). On October 27, 2020, Plaintiff filed

1 the First Amended Complaint (“FAC”) to add a cause of action under PAGA, Lab. Code § 2698, *et seq.*
2 On December 4, 2020, Defendant filed its Answer to the FAC.

3 12. The investigation and discovery conducted in this matter have been adequate to give the
4 Plaintiff and Class Counsel a sound understanding of the merits of their position, Defendant’s defenses,
5 and to evaluate the reasonable value range of the claims of the Class.

6 13. Both before and after initiating the Action on behalf of the putative class, Plaintiff and
7 Class Counsel diligently investigated the claims alleged and conducted legal research regarding
8 Defendant’s potential liability and defenses. The Parties engaged in extensive formal discovery, and Class
9 Counsel prepared and propounded interrogatories, production demands, and multiple sets of requests for
10 admissions on Defendant. After consistent good faith meet and confer efforts, the parties agreed to proceed
11 to private mediation with experienced wage-and-hour mediator, Kelly Knight, Esq. Prior to mediation
12 with Mr. Knight, the Parties also engaged in substantial informal discovery, including production of a
13 randomly selected time and pay record sampling, which primarily covered the 2019 to 2021 period.

14 14. On November 5, 2021, the Parties participated in an all-day private mediation, presided
15 over by mediator Kelly Knight, which did not result in a settlement. Thereafter, Plaintiff resumed formal
16 discovery efforts, and the Parties continued to meet and confer regarding Defendant’s discovery responses.
17 Defendant also propounded interrogatories and production demands on Plaintiff. Plaintiff also took the
18 deposition of Defendant’s Person Most Knowledgeable (“PMK”), propounded additional written
19 discovery, and obtained declarations from putative class members after a successful *Belair-West* mailing.

20 15. After substantial meet and confer efforts, Defendant provided supplemental discovery
21 responses as well as informally produced documents and information for the purposes of mediation on the
22 entry of a stipulated protective order, including additional time and pay records from the 2017 to 2018
23 time period. In all, Defendant produced thousands of pages of data and documents, including written
24 policies and a detailed sample of non-exempt employees’ timekeeping and payroll records.

25 16. This firm retained preeminent labor violation statistician Dr. Richard Drogin, who
26 tabulated meal breaks in the timekeeping data provided by Defendant and analyzed the data for systemic
27 meal and rest break violations. In addition, this firm retained economic expert Berger Consulting Group,

1 who analyzed the data and created a damages model based on it. Class Counsel carefully considered the
2 class claims at issue and its experts' analysis of violation rates for Defendant's timekeeping and payroll
3 data.

4 17. On September 23, 2022, the Parties participated in a second mediation, this one presided
5 over by Hon. Lisa Hart Cole (Ret.), which resulted in the Parties' acceptance of a mediator's proposal.
6 Based on the parties' substantial investigation and discovery, Class Counsel was able to act intelligently
7 and effectively in negotiating at arm's-length and evaluating the mediator's recommendation. All
8 negotiations at all times were at arm's length and adverse.

9 18. Thereafter, the parties drafted a long-form settlement agreement and class notice, based on
10 the Model Class Action and PAGA Settlement Agreement and Class Notice (LACIV296), provided by
11 the LA County Superior Court for optional use in June 2022.

12 19. On February 16, 2023, Plaintiff filed a motion seeking preliminary approval. In advance of
13 the hearing, this Court issued a "checklist" of items to address, and on April 19, 2023, counsel for the
14 parties filed declarations addressing each of these items. As requested, Class Counsel provided further
15 detail regarding Plaintiff's expert's analysis and other information. At the preliminary approval hearing
16 on April 20, 2023, the Court instructed counsel to make additional certain revisions to the settlement
17 agreement and class notice. These changes included modifying the description of the payment structure
18 at paragraph 4.4 of the Settlement, modifying the PAGA Period end date at paragraph 1.31, and modifying
19 the definition of "Released Parties" at paragraph 1.41.

20 20. On April 24, 2023, after completing all requested changes, Class Counsel filed a
21 supplemental declaration along with an amended settlement agreement and class notice. A true and correct
22 copy of the Amended Class Action and PAGA Settlement Agreement ("Settlement," "Settlement
23 Agreement," or "SA") is attached as **Exhibit 1** to the Kick Declaration.

24 21. On May 1, 2023, the Court granted preliminary approval of the Amended Settlement
25 Agreement on the condition that the parties file declarations, in connection with the final approval hearing,
26 confirming a lack of conflict with the proposed cy pres recipient. (*See* Preliminary Approval Order, 3:5-
27 8.) Accordingly, prior to final approval, Class Counsel coordinated with the defense to file declarations

on behalf of Plaintiff and Defendant to confirm no party has a financial interest in, or role in the governance of, Public Citizen Foundation. (See Gonzalez Decl., ¶ 10; Declaration of Shahriyar Rahmati, ¶ 3.)

22. Thereafter, Class Counsel worked with the settlement administrator and opposing counsel on class notice and settlement administration issues and drafted the concurrently filed Motion for Final Approval.

23. The Kick Law Firm, APC undertook this case on a contingent basis, with the understanding that it would not be compensated for our efforts unless the case was successful. To date, TKLF has not been paid for any of its time spent on this matter. The time spent on this matter by the firm's attorneys has required considerable work that could have, and would have, been spent on other billable matters. As a result of having accepted and been devoted to this case, it is my informed belief this law firm wound up not representing parties in cases it otherwise would have, and which in my opinion would have compensated this firm at its hourly rates requested here.

24. The Kick Law Firm, APC is the only Class Counsel in this case, so there is no fee sharing.

25. Class Counsel requests reimbursement of \$61,673.21 for actual costs advanced and necessarily incurred in connection with the prosecution and settlement of the Action to date. This Court already reviewed litigation costs on an itemized basis at the Motion for Preliminary Approval before granting Preliminary Approval, and Class Counsel now provides an updated itemized list below. All of these out-of-pocket expenses were reasonably and necessarily incurred to pursue this Action:

Date	Vendor	Amount
7/15/20	USPS Certified Mail (3)	\$24.60
7/15/20	LWDA	\$75.00
8/4/20	One Legal	\$9.95
8/15/20	First Legal	\$1,654.55
8/31/20	First Legal	\$230.03
9/3/20	Stamps.com	\$0.50
9/14/20	Stamps.com	\$0.50
9/15/20	First Legal	\$57.85
10/23/20	LA Court Connect	\$23.00
10/31/20	First Legal	\$52.25
10/31/20	First Legal	\$73.25

1	2/9/21	CaseAnywhere	\$145.20
2	3/16/21	One Legal	\$67.50
3	3/19/21	One Legal	\$69.49
4	4/27/21	LA Court Connect	\$23.00
5	4/27/21	One Legal	\$69.49
6	4/29/21	First Legal	\$107.50
7	5/24/21	Judicate West	\$5,150.00
8	5/28/21	One Legal	\$110.67
9	7/7/21	First Legal	\$52.25
10	7/7/21	First Legal	\$29.75
11	7/7/21	First Legal	\$100.85
12	7/7/21	First Legal	\$34.25
13	7/7/21	First Legal	\$52.25
14	9/24/21	CaseAnywhere	\$144.00
15	9/24/21	CaseAnywhere	\$120.00
16	11/11/21	Judicate West	\$3,920.00
17	12/3/21	CaseAnywhere	\$12.20
18	12/3/21	CaseAnywhere	\$32.90
19	12/4/21	CaseAnywhere	\$120.00
20	2/14/22	Berger Consulting Group	\$2,212.50
21	3/1/22	Simpluris	\$349.50
22	3/11/22	DKA Statistical Consulting	\$1,000.00
23	4/12/22	DKA Statistical Consulting	\$7,100.00
24	5/6/22	DKA Statistical Consulting	\$3,912.50
25	5/13/22	CaseAnywhere	\$210.00
26	5/15/22	First Legal	\$31.00
27	6/5/22	DKA Statistical Consulting	\$7,262.00
	6/29/22	iBridge LLC	\$1,925.88
	6/29/22	Law Office of Raquel Kuronen	\$720.00
	7/7/22	DKA Statistical Consulting	\$4,950.00
	7/13/22	First Legal	\$204.53
	7/13/22	First Legal	\$41.75
	7/13/22	First Legal	\$34.95
	7/13/22	First Legal	\$22.00
	7/13/22	First Legal	\$31.00
	9/5/22	CaseAnywhere	\$12.00
	9/15/22	Signature Resolution	\$3,700.00
	10/5/22	CaseAnywhere	\$12.20
	10/9/22	First Legal	\$31.00

10/17/22	CaseAnywhere	\$144.00
10/17/22	CaseAnywhere	\$162.00
11/9/22	First Records Retrieval	\$725.80
11/9/22	First Records Retrieval	\$98.50
11/9/22	First Records Retrieval	\$286.10
11/9/22	First Records Retrieval	\$74.75
11/9/22	Berger Consulting Group	\$150.00
12/9/22	CaseAnywhere	\$138.00
10/9/22	First Legal	\$34.95
12/5/22	CaseAnywhere	\$32.90
12/9/22	CaseAnywhere	\$138.00
12/30/22	DKA Statistical Consulting	\$7,262.50
12/30/22	DKA Statistical Consulting	\$4,950.00
12/31/22	CaseAnywhere	\$12.20
12/31/22	CaseAnywhere	\$12.20
2/3/23	One Legal	\$113.25
2/3/23	CaseAnywhere	\$15.20
2/10/23	CaseAnywhere	\$130.00
3/3/23	CaseAnywhere	\$15.20
3/3/23	CaseAnywhere	\$15.20
3/3/23	CaseAnywhere	\$77.54
3/3/23	CaseAnywhere	\$155.08
3/3/23	One Legal	\$113.25
4/5/23	One Legal	\$43.24
4/27/23	Berger Consulting Group	\$140.00
5/3/23	CaseAnywhere	\$15.20
5/3/23	CaseAnywhere	\$15.20
5/3/23	CaseAnywhere	\$15.20
5/3/23	CaseAnywhere	\$30.41
5/4/23	First Legal	\$51.75
8/3/23	CaseAnywhere	\$180.00
	TOTAL	\$61,673.21

26. As evidenced by her concurrently filed declaration, the proposed class representative Yamzin Gonzalez is typical of the settlement classes. She was employed by Defendant during the Class Period and was subject to the same compensation and employment policies and practices. Moreover, Ms. Gonzalez's interests are essentially identical, if not exactly identical, to those of the Class and there is no conflict between Plaintiff or Class Counsel, on the one hand, and any other Class Member. Also, Ms.

1 Gonzalez has participated in this case actively. She spent a substantial amount of time and effort in
2 investigating the claims, gathering documents and other information, aiding in the preparation for two
3 mediation sessions, and making himself available to provide the attorneys further information during both
4 days of mediation and when requested. She was also prepared and willing to testify on behalf of the class
5 if necessary. She also demonstrated an understanding of the case, and her duties as a class representative
6 to protect the absent class members. She was very helpful to the case, and very responsive to all of Class
7 Counsel's requests. Moreover, Ms. Gonzalez willingly faced reputational risks as a result of bringing the
8 Action in order to champion the rights of her fellow workers, as described in more detail in her
9 concurrently filed declaration.

10 27. The Parties propose that the funds represented by any uncashed or undeliverable checks be
11 distributed to Public Citizen Foundation, a 501(c)(3) consumer advocacy organization that works to
12 protect workers' and consumer rights through education and litigation. I believe such distribution is
13 appropriate and fulfills the purposes of this wage and hour class action because Public Citizen is an
14 organization that substantially advocates on behalf of workers and consumers such as those at issue in this
15 case. I have proposed Public Citizen Foundation as a *cy pres* recipient in other class actions and it has
16 been approved by courts upon such proposal as an appropriate *cy pres* recipient. Neither I nor any other
17 attorney of The Kick Law Firm, APC, has any financial interest in or is involved in the governance of the
18 organization. Ms. Gonzalez's concurrently filed declaration also declares to this personally. Further, the
19 concurrently filed Declaration of Shahriyar Rahmati declares to Defendant's lack of financial interest and
20 involvement.

21 28. In terms of valuation of the case, an analysis to satisfy *Kullar v. Footlocker* was already
22 performed in the Motion for Preliminary Approval, but a summary is now repeated here. Based on the
23 analysis of Plaintiff's expert consultants at Berger Consulting and DKA Statistical Consulting, Plaintiff
24 estimated Defendant's exposure and the potential recovery for the putative Class if Plaintiff were to prevail
25 on each theory of liability at trial to be approximately \$1,414,245.61, without penalties. Accordingly,
26 Plaintiff estimated that the proposed settlement of \$827,500.00 is approximately 58.5% of the total
27 recovery possible for unpaid wages, not including penalties. Taking maximum potential penalties into

1 account, Plaintiff estimated a maximum total exposure of \$4,147,997. Therefore, the proposed settlement
2 of \$827,500 represents approximately 19.95% of Defendant's maximum possible exposure for damages
3 and penalties, not including interest. However, after accounting for real litigation risks, relative strengths
4 and weaknesses of Plaintiff's claims, and other factors, this figure is about 43%. To account for the real
5 litigation risks, strengths, and weaknesses of the case, Plaintiff applied the following discounts: 35%
6 discount for the risk of non-certification; 30% discount on penalty claims under *Maldonado*; and 50%
7 discount on PAGA claims for the Court's discretion on reducing penalties and underlying risks. These
8 estimated discounts are modest as Class Counsel anticipated a further reduction on PAGA penalties.
9 Applying these discounts results in a risk-adjusted estimate of \$1,921,173.98. The negotiated GSA of
10 \$827,500.00 thus represents at least 43% of the realistic risk adjusted exposure.

11 29. Although I do believe this was a strong case, it did have risks. Had the Action not settled,
12 Defendant would have challenged class certification and liability. Defendant vigorously disputes
13 Plaintiff's claims and asserted multiple defenses. For instance, Defendant denies that Class Members were
14 not properly compensated and alleges that its third-party payroll provider was instructed to process the
15 exact times that employees clocked in and out. Defendant also argues that any allegedly unpaid overtime
16 hours were either unauthorized, actively concealed from Defendant, or there was no reasonable basis why
17 Defendant knew or should have known of such overtime work.

18 30. Plaintiff also faced the risk Defendant would successfully argue that individualized
19 questions of fact predominate over any common issues, and that such issues would preclude certification.
20 Defendant may argue the Class is uncertifiable due to individual inquiries as to each Class Member's
21 experience with supposedly working off the clock and logging time worked. Defendant would have likely
22 argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide adjudication. On
23 the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide
24 Plaintiff's claims on a class-wide basis. Additionally, preparation for trial would have been expensive for
25 all Parties.

26 31. Were litigation to proceed, there is a strong likelihood it would be protracted and
27 contentious due to Defendant's dispute of nearly all aspects of Plaintiff's claims. As a threshold matter, if

1 the Agreement is not approved, Plaintiff will have to prepare and file a motion for class certification,
2 which outcome is uncertain based on Defendant's contentions, *inter alia*, that individual questions of fact
3 predominate, and that Plaintiff cannot show the "willfulness" requirement for Labor Code section 203
4 penalties. If the proposed class were certified, Defendant likely would appeal certification, move for
5 decertification, and/or move for Summary Judgment. Plaintiff believes she would prevail on certification,
6 but the risks of further litigation to absent Class Members are significant.

7 32. To succeed on the merits, Plaintiff would have to prove that Defendant actually engaged
8 in the practices and policies alleged and that those practices and policies violated the law. While Class
9 Counsel believe strong evidence exists showing Defendant's liability, there remains a risk that the trier of
10 fact might find otherwise. If the case were to proceed to trial, additional discovery would be needed and
11 the Parties would thus incur significant additional expenses, which money could go instead to fund a
12 settlement for the benefit of the Class as a whole. Moreover, discovery disputes would have certainly
13 arisen, which would have cost the Parties additional time and money.

14 33. Further, regardless of which Party prevailed, appellate practice might ensue, further
15 delaying any possible recovery by Class Members. In other words, both Parties would likely incur
16 substantial attorneys' fees and costs from continued litigation, likely approaching hundreds of thousands
17 of dollars for both sides. For example, thorough and exhaustive analysis of Defendant's timekeeping and
18 payroll records would have been required for presentation at trial, in addition to possible analysis of field
19 experiment recreations of the alleged off-the-clock violations. The parties would also likely incur
20 significant additional expenses for expert witnesses and trial consultants. Continued litigation also likely
21 would have lasted additional years. Further, the concurrently filed declaration of Greg Taylor provides
22 additional information regarding the Defendant's financial condition which went into the consideration.

23 34. Class Counsel believes the Settlement, which provides for a gross settlement amount of
24 \$827,500.00, is fair, adequate, and reasonable, and in the best interest of the Class Members. Class
25 Counsel believes the GSA represents a considerable recovery for a Class of 232 individuals, especially
26 taking into account the potential risks and rewards inherent in any case and, in particular, the
27 aforementioned risks in this matter.

35. In light of the above considerations, and given the risks inherent in continuing to litigate, including 1) the possibility of an unfavorable, or less favorable, result at trial, 2) the likely possibility that post-trial motions may similarly result in a less favorable result than at trial, and 3) the possibility of a less favorable result on appeal, with the certainty that the appeal process would be lengthy, Class Counsel believes the Agreement is a fair, adequate, and reasonable resolution for the Class as a whole.

36. On August 9, 2023, I am informed this law firm will submit the Settlement Agreement as well as the Motion for Final Approval of Class and PAGA Action Settlement and supporting declarations to the LWDA pursuant to the Private Attorneys General Act (“PAGA”).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of August 2023, at Los Angeles, California.

/s/ Taras Kick
Taras Kick

EXHIBIT 1

AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Amended Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Yazmin Gonzalez (“Plaintiff”) and Defendant Branded Online, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Gonzalez v. Branded Online, Inc.*, initiated on August 5, 2020, and pending in Superior Court of the State of California, County of Los Angeles, Case No. 20STCV29702.
- 1.2 “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all Class Members who worked for Defendant during the PAGA Period.
- 1.5 “Class” means all current and former non-exempt employees who worked for Defendant in the State of California at any time during the Class Period.
- 1.6 “Class Counsel” means The Kick Law Firm, APC.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, employee identification number, last-known mailing address, telephone numbers, email addresses, Social Security number, inclusive dates of active employment during the Class Period, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, along with a Spanish translation, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from August 5, 2016, through September 30, 2022.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Los Angeles.
- 1.16 “Defendant” means named Defendant Branded Online, Inc.
- 1.17 “Defense Counsel” means Gordon Rees Scully Mansukhani, LLP
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means \$827,500.00 which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

- 1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31 “PAGA Period” means the period from August 5, 2019, through September 30, 2022.
- 1.32 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33 “PAGA Notice” means Plaintiff’s July 15, 2020 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$25,000), allocated 25% to the Aggrieved Employees (\$6,250) and the 75% to LWDA (\$18,750) in settlement of PAGA claims.
- 1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36 “Plaintiff” means Yazmin Gonzalez, the named plaintiff in the Action.
- 1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.4 below.

- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.5 below.
- 1.41 “Released Parties” means Defendant and each of its former and present directors, officers, shareholders, owners, management-level and exempt employees, attorneys, insurers, predecessors, successors, and assigns.
- 1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43 "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45 “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On August 5, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) failure to pay minimum wage; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to indemnify for necessary business expenses; (6) failure to provide accurate itemized wage statements; (7) failure timely to pay all wages at separation; and (8) unlawful and unfair business practices. On October 27, 2020, Plaintiff filed a First Amended Complaint (“FAC”) adding a ninth cause of action under PAGA. The FAC is the operative complaint in the Action (the “Operative Complaint”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3 On November 5, 2021, the Parties participated in an all-day mediation, presided over by mediator Kelly Knight, which did not result in a settlement. On September 23, 2022, the Parties participated in a second mediation, presided over by Hon. Lisa Hart Cole (Ret.), which led to this Agreement to settle the Action.
- 2.4 Prior to reaching the Settlement, the Parties exchanged formal written discovery, and Plaintiff took the deposition of Defendant’s Person Most Knowledgeable (“PMK”) and obtained declarations from putative class members. After agreeing to mediate,

the Parties engaged in additional discovery to prepare for mediation. The Parties also engaged in extensive meet and confer efforts and Defendant ultimately produced substantial timekeeping and payroll records, and copies of Defendant's written policies, including employee handbooks. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"), and to the extent further information is required to satisfy this, Defendant will reasonably provide it to further support the Motion for Preliminary Approval.

- 2.5 The Court has not granted class certification, as no motion for certification has been filed to date. The Parties agree to certification of this matter as a class action pursuant to California Code of Civil Procedure § 382 for the purposes of this Agreement and the settlement of this Action only.
- 2.6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

- 3.1 Gross Settlement Amount. Defendant promises to pay \$827,500 and no more as the Gross Settlement Amount and to separately pay any and all employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments. The Settlement Administrator shall provide the calculations for employer-side payroll taxes. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS

Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

- 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third (33-1/3%), which is currently estimated to be \$275,833.33 and a Class Counsel Litigation Expenses Payment of not more than \$65,000. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Final Approval and for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms.
- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$10,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment less than \$10,000, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - 3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - 3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members

on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000 to be paid from the Gross Settlement Amount, with 75% (\$18,750) allocated to the LWDA PAGA Payment and 25% (\$6,250) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 232 Class Members who collectively worked a total of 17,209 Workweeks, and 159 Aggrieved Employees who worked a total of 6,236 PAGA Pay Periods.

4.2 Class Data. Not later than 10 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator, as follows. Defendant shall make a first transfer to the Settlement administrator of \$206,875 plus agreed employer payroll taxes no later than 21 days after the Effective Date, provided

the Effective Date is at least three quarters (270 days) after the signing of this Settlement Agreement. Defendant will transfer \$124,125 plus agreed employer payroll taxes before the end of the next quarter (meaning within ninety days) after the first transfer. This is considered the second transfer. Defendant will make four additional transfers to the Administrator of \$124,125 per quarter plus agreed employer payroll taxes each subsequent quarter (every ninety days) which will then cause the amount agreed to be paid under this Settlement Agreement to be transferred in full four quarters after the first quarterly transfer was made by Defendant to the Administrator. The Administrator will make a proportionate first distribution under this Settlement Agreement within 15 days of receiving the second transfer from Defendant, meaning \$331,000 plus employer payroll taxes will have been transferred, meaning a proportionate distribution of 40%. A second distribution under this Settlement Agreement will be made by the Administrator within 15 days of receiving the last transfer from Defendant, which will be four quarters after the first transfer of \$124,125 plus employer payroll taxes.

- 4.4 Payments from the Gross Settlement Amount. The Administrator will make two distributions, as set forth in Paragraph 4.3 The first distribution will be within 15 days after Defendant funds the first 40% of the Gross Settlement Amount, and the second distribution will be with 15 days after the Defendant funds the remaining 60% of the Gross Settlement Fund, as per Paragraph 4.3. The Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment in a proportionate percent amount each time. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS

forwarding address. Within 14 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the proposed cy pres recipient, subject to Court approval, without further amendment to this Agreement, consistent with Code of Civil Procedure Section 384, subd. (b) (“Cy Pres Recipient”). The Parties propose that funds represented by any uncashed or undeliverable checks shall be distributed to Public Citizen Foundation, a section 501(c)(3) non-profit organization. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. Recipients. Participating Class Members who do not cash their Individual Class Payment and Individual PAGA Payment checks remain bound to the terms of this Agreement.

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Defendant will release claims against all Released Parties as follows:

5.1 **Mutual Release.** With the exception of any of their respective rights and obligations created pursuant to this Agreement, each party to this Agreement mutually releases and discharges the other, its predecessors, successors and assigns and their respective officers, directors, employees, other representatives and shareholders, from any and all known claims, demands, causes of action, obligations, and liabilities of every kind and nature whatsoever which each had, or claims to have had, or now has, against the other, which relate to or arises out of any agreements, transactions, events or circumstances which are the subject of the Action.

5.2 **Plaintiff’s Release.** Without limiting the generality of the foregoing, Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or

reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released below, pursuant to Civ. Code § 1542. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.3 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

- 5.4 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, Plaintiff's PAGA Notice, or otherwise ascertained in the course of the Action. Except as set forth in Section 5.4 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.5 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

- 6.1 Defendant's Declaration in Support of Preliminary Approval. Within 7 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts

relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. To the extent necessary, Defendant will provide Class Counsel with necessary information to satisfy *Dunk/Kullar* in the Motion for Preliminary Approval.

- 6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and/or the proposed Cy Pres; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for making best efforts to expeditiously finalize and file the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtain a prompt hearing date for the Motion for Preliminary Approval; and appear in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements. Out of two highly regarded settlement administrators with substantial class action administration experience, the lower bid was provided by Simpluris, Inc., with a “not to exceed” cap of \$10,000. Class Counsel deems the bid to be reasonable considering the Class size, amount of mailing, and services provided, including skip tracing, re-mailing, calculating payroll tax, and other duties.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, in English with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further

attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

- 7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendant, or Class Counsel are contacted by or otherwise discover any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of

the Settlement, including the Participating Class Members' Releases under Paragraphs 5.4 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.5 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

- 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
- 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but

not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 232 Class Members and 17,209 Total Workweeks during the Class period and (2) there were 159 Aggrieved Employees who worked 6,236 Pay Periods during the PAGA Period. If the calculated number of Class Members, Workweeks, or Pay Periods exceeds Defendant's estimate by more than 10%, then the Gross Settlement Amount shall be increased in proportion to the percentage increase in the number of Class Members, Workweeks, or Pay Periods in excess of 10%.
9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may elect, but are not obligated, to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of their election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than three days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive

documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
 - 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
 - 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
 - 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.
11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

- 12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 Neutral Employment Reference. If Defendant receives any requests from prospective employers or other persons about Plaintiff's employment, Defendant shall provide a neutral and objective employment reference, to the extent permitted by law, and refrain from subjectively characterizing Plaintiff's personal characteristics, qualities, or job performance in any manner that reflects poorly on Plaintiff and shall not refer to the Action or this Settlement.
- 12.4 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be

construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.5 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.7 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.8 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.10 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.13 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

- 12.14 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049

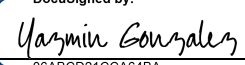
To Defendant:

Gordon Rees Scully Mansukhani, LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

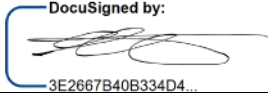
- 12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: 4/21/2023

By:

DocuSigned by:

06ABCD21CCA64BA...
Yazmin Gonzalez
Plaintiff and Class Representative

Date: 4/22/2023

By: 
For Defendant Shahriyar Rahmatov CFO/COO

APPROVED AS TO FORM ONLY:

Date: _____

By: _____
Taras Kick
The Kick Law Firm, APC
Attorneys for Plaintiff and the Class

Date: 4/24/23

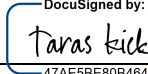
By: 
Tom Nagashima
Gordon Rees Scully Mansukhani, LLP
Attorneys for Defendant

Date: _____

By: _____
For Defendant

APPROVED AS TO FORM ONLY:

Date: 4/24/2023

By:  _____
Taras Kick
The Kick Law Firm, APC
Attorneys for Plaintiff and the Class

Date: _____

By: _____
Tom Nagashima
Gordon Rees Scully Mansukhani, LLP
Attorneys for Defendant

Exhibit A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

(Gonzalez v. Branded Online, Inc., LASC Case No. 20STCV29702)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant Branded Online, Inc. (hereinafter referred to as “Branded Online” or “Defendant”) for alleged wage and hour violations. The Action was filed by former Branded Online employee Yazmin Gonzalez (“Plaintiff”) and seeks payment of (1) back wages and other relief for a class of all current and former drivers (“Class Members”) who worked for Branded Online in the State of California at any time during the Class Period; and (2) penalties under the California Private Attorney General Act (“PAGA”) for all Class Members who worked for Branded Online during the PAGA Period (“Aggrieved Employees”). The Class Period is from August 5, 2016 through September 30, 2022. The PAGA Period is from August 5, 2019 through December 2, 2022.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Branded Online to fund Individual Class Payments, and (2) a PAGA Settlement requiring Branded Online to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Branded Online’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Branded Online’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Branded Online’s records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Branded Online to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Branded Online.

If you worked for Branded Online during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Branded Online.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Branded Online, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Branded Online will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Branded Online that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [RESPONSE DEADLINE]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Branded Online must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [RESPONSE DEADLINE]	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on []. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [RESPONSE DEADLINE]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Branded Online’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [RESPONSE DEADLINE]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Branded Online. The Action accuses Branded Online of violating California labor laws by failing to pay minimum wages, wages due upon separation, and reimbursable expenses and failing to provide meal periods, rest breaks, and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: The Kick Law Firm, APC (“Class Counsel”).

Branded Online strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Branded Online or Plaintiff is correct on the merits. In the meantime, Plaintiff and Branded Online hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Branded Online have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Branded Online does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Branded Online has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

- A. Branded Online Will Pay \$827,500 as the Gross Settlement Amount (“Gross Settlement”). Branded Online has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Branded Online will fund the Gross Settlement not more than 21 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
- B. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - i. Up to one-third (33-1/3%) of the Gross Settlement, which is currently estimated to be \$275,833.33 to Class Counsel for attorneys’ fees and up to \$65,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - ii. Up to \$10,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other

than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

- iii. Up to \$10,000 to the Administrator for services administering the Settlement.
- iv. Up to \$25,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- C. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- D. Taxes Owed on Payments to Class Members. Plaintiff and Branded Online are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Branded Online have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- E. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will irrevocably lost to you because they will be paid to Public Citizen Foundation, a section 501(c)(3) non-profit organization ("Cy Pres Recipient").
- F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [RESPONSE DEADLINE], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [REDACTED] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting

forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Branded Online.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Branded Online based on the PAGA Period facts alleged in the Action.

- G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Branded Online have agreed that, in either case, the Settlement will be void: Branded Online will not pay any money and Class Members will not release any claims against Branded Online.
- H. Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
- I. Participating Class Members' Release. After the Judgment is final and Branded Online has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Branded Online or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in Section 5.4 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- J. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Branded Online has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Branded Online, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Branded Online or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

4. **HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

- A. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
- B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$6,250 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
- C. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Branded Online's records, are stated in the first page of this Notice. You have until **[RESPONSE DEADLINE]** to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Branded Online's calculation of Workweeks and/or Pay Periods based on Branded Online's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will

resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Branded Online's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

- A. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
- B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Gonzalez v. Branded Online, Inc.*, LASC Case No. 20STCV29702, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [RESPONSE DEADLINE], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Branded Online are asking the Court to approve. At least 16 days before the [REDACTED] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can

also view them on the Administrator's Website (url) or the Court's website at (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [RESPONSE DEADLINE]**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Gonzalez v. Branded Online, Inc.*, LASC Case No. 20STCV29702 and include your name, current address, telephone number, and approximate dates of employment for Branded Online and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on (date) at (time) in Department 17 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website (url) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Branded Online and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Simpluris' website at (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to <http://www.lacourt.org/casesummary/ui/index.aspx> and entering the Case Number for the Action, Case No. 20STCV29702. You can also make an appointment to personally review court documents in the Clerk's Office

(Room 255) or by calling (213) 310-7000.

**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
ABOUT THE SETTLEMENT**

Class Counsel:

Name of Attorney: Taras Kick

Email Address: taras@kicklawfirm.com

Name of Firm: The Kick Law Firm, APC

Mailing Address: 815 Moraga Drive, Los Angeles, CA 90049

Telephone: (310) 395-2988

Settlement Administrator:

Name of Company: Simpluris, Inc.

Email Address: CaseSupport@Simpluris.com

Mailing Address: P.O. Box 26170 Santa Ana, CA 92799

Telephone: (888) 369-3780

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

The Kick Law Firm

A Professional Corporation

815 Moraga Drive
Los Angeles, CA 90049
310 395 2988 / Fax: 310 395 2088

July 15, 2020

Via Online Submission @ <https://dir.tfaforms.net/207>

Labor Workforce Development Agency, Department of Industrial Relations

Attn: PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via Certified Mail - Return Receipt Requested

BRANDED ONLINE, INC. (C3294217)

946 West 17th Street
Costa Mesa, California 92627

Via Certified Mail - Return Receipt Requested

BRANDED ONLINE, INC. (C3294217)

1775 Flight Way, Suite 400
Tustin, California 92782

Via Certified Mail - Return Receipt Requested

BRANDED ONLINE, INC. (C3294217)

**c/o California Agent for Service of Process CSC
– LAWYERS INCORPORATING SERVICE
(C1592199)**

2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Yazmin Gonzalez

Employer: Branded Online, Inc.

To Whom It May Concern:

The Kick Law Firm, APC (“TKLF”) represents Yazmin Gonzalez (“Employee”), a current or former employee of Branded Online, Inc. its subsidiaries, affiliates, successors, assigns, clients, or customers Branded Online, Inc. (“Branded Online, Inc.” or “Employer”).¹ Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001, any other applicable IWC Wage Order (hereinafter, references to “IWC Wage Order No. 4-2001” includes the provisions in any other applicable IWC Wage Order), which Employee alleges Employer has violated, including the facts and theories to support the alleged violations.

Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer. Enclosed, please find a draft of Employee’s proposed complaint, which is incorporated by reference into this notice.

Under separate cover, TKLF is sending a check in the amount of \$75.00 to the Accounting Unit of the Department of Industrial Relations for the requisite filing fee, pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B).

This letter also serves as notice to Employer of Employee’s demand for preservation and non-spoliation of evidence pursuant to which Employee requests that Employer take all reasonable steps to promptly save and preserve all relevant documents and data including all electronic files and hard-copy documents that are related to Employee’s employment and potential claims including those of similarly-situated and aggrieved employees, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

Employee serves this notice on behalf of all persons who are, were, or will be non-exempt employees of Employer, or any related or alter-ego company, corporation, partnership, and/or business entity at any time from four years prior to the date of this notice in the State of California. Correspondingly, Employee serves this notice

¹ *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 811 holds that an individual owner of a business or other person may be held liable for PAGA penalties for violations of Labor Code § 558(a) (overtime wage payment violations) and section 1197.1(a) (minimum wage payment violations). (824; 828-829.) *Atempa* also holds that it was not reversible error for plaintiffs to recover attorney fees and costs and interest from an individual under PAGA. (829-831.)

to Employer and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, entities or other persons who are or may be liable under California law for any of the violations alleged herein including at any location where non-exempt employees worked for Employer in the State of California, who may be held liable for the violations of California law as alleged herein during the relevant statutory periods.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which may be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

Employee, on behalf of Employee and all other similarly-situated current and former non-exempt employees of Employer in the State of California during the four years preceding the date of this notice, is investigating a potential class and representative action on behalf of Employer’s current and former non-exempt employees in the State of California regarding, among other things, the following violations:

- (1) Failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-2001, § 4;
- (2) Failure to pay employees overtime wages in violation of Labor Code §§ 510, 1198 and IWC Wage Order No. 4-2001, § 3;
- (3) Failure to provide meal periods to employees, or to pay one additional hour of compensation at the employee’s regular rate of compensation for each workday that a meal period was not provided, in violation of Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 11;
- (4) Failure to provide rest periods to employees,² or to pay one additional hour of compensation at the employee’s regular rate of compensation for each workday that a rest period was not provided, in violation of Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 12;
- (5) Failure to indemnify employees for necessary expenditures incurred in discharge of duties in violation of Labor Code § 2802(a), 1198 and IWC Wage Order No. 4-2001, § 9;
- (6) Failure to furnish accurate itemized wage statements to employees in violation of Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 4-2001, § 7;
- (7) Failure to timely pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201(a), 202, and 203;
- (8) Engagement in unlawful, unfair or fraudulent business acts or practices in violation of California Business and Professions Code §§ 17200, *et seq.*; and
- (9) Failures to comply with various Labor Code and IWC Wage Order No. 4-2001 provisions stated above and below warranting the assessment of PAGA civil penalties pursuant to Labor Code §§ 2698, *et seq.* including violations of:
 - i. Labor Code § 201 (failure to timely pay all wages due at time of discharge);
 - ii. Labor Code § 201.3 (failure to timely pay all wages due as a temporary services employer during employment and at time of discharge);
 - iii. Labor Code § 202 (failure to timely pay all wages due at time of quitting or within 72 hours thereof);
 - iv. Labor Code § 203 (failure to pay wages of the employee as continuing penalty up to 30 days after discharge or quitting);
 - v. Labor Code § 204 (failure to timely pay all wages due during employment);
 - vi. Labor Code § 226 (failure to furnish accurate itemized wage statements and maintain accurate records);
 - vii. Labor Code § 226.7 (failure to timely pay all meal period and rest period wages due during employment);
 - viii. Labor Code § 510 (failure to pay all overtime wages due);

² “[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory.” (*Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.)

- ix. Labor Code § 512 (failure to provide timely first and second meal periods);
- x. Labor Code § 1102.5 (retaliation for disclosing information reasonably believed to be a violation of state or federal law);
- xi. Labor Code § 1174(d) (failure to keep accurate payroll records in a central location in California);
- xii. Labor Code § 1197 (failure to pay all minimum wages including split shift wages); and
- xiii. Labor Code § 2802 (failure to indemnify employees).

In short, but as explained in greater detail below, Employer's unlawful employment practices and policies have deprived its employees of earned wages and other compensation, including civil penalties, and have subjected Employee and/or others similarly situated or aggrieved employees to working conditions prohibited under California law based on the facts and theories described in greater detail below.

(1) Failure to Pay Minimum Wages

Pursuant to California Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-2001, § 4, California has fixed minimum wage rates, has required employers in California to pay their employees no less than the minimum for all hours worked in the payroll period, has provided that minimum wages for employees fixed by the IWC or by state law, is the minimum wage to be paid to employees, and that payment of a lower wage than the minimum so fixed is unlawful.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-2001, § 4. Employer failed to pay Employee and/or other similarly situated and aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Employee and/or other similarly situated and aggrieved to work off-the-clock; requiring, suffering or permitting Employee and/or other similarly situated and aggrieved employees to work during their purportedly duty-free meal periods but not compensating them for this time; by failing to pay one hour of minimum wages in addition to the minimum wage for that workday when Employee and/or other similarly situated and aggrieved employees worked split shifts, illegally and inaccurately recording time worked by Employee and/or other similarly situated and aggrieved employees; failing to properly maintain Employee and/or other similarly situated and aggrieved employees' records; failing to provide accurate itemized wage statements to Employee and/or other similarly situated and aggrieved employees for each pay period; and other methods to be discovered.

Employer's conduct violates §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-2001, § 4 because Employer has knowingly and willfully refused to perform their obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(2) Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510, 1198 and IWC Wage Order No. 4-2001, § 3, California has required employers to pay their employees at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time 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 consecutive day of work in any workweek.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510, 1198 and IWC Wage Order No. 4-2001. Employer failed to compensate Employee and/or other similarly situated and aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay when required; requiring, suffering or permitting Employee and/or other similarly situated and aggrieved employees to work off-the-clock; requiring, suffering or permitting Employee and/or other similarly situated and aggrieved employees to work during their purportedly duty-free meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Employee and/or other similarly situated and aggrieved employees; failing to properly maintain Employee and/or other similarly situated and aggrieved employees' employment records through falsifying hours worked; failing to provide accurate itemized statements to Employee and/or other similarly situated and aggrieved employees for each pay period; and other methods to be discovered.

Employer's conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 4-2001, § 3 because Employer has refused to perform its obligations to compensate Employee and/or other similarly situated and

aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(3) Failure to Provide Meal Periods

Pursuant to California Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 11, California has prohibited employers from employing a person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work, the meal period may be waived by mutual consent of the employer and the employee. California has also prohibited employers from employing a person for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. California has also required that unless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. Moreover, if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the relevant IWC Wage Order, then the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

Employee and/or other similarly situated and aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 11. Employer failed to provide Employee and/or other similarly situated and aggrieved employees meal periods, or to pay one (1) additional hour of compensation at Employee and/or other similarly situated and aggrieved employees' regular rates of compensation for each workday that a meal period was not provided, as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past five (5) hours from the starts of their shifts before starting a meal period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past ten (10) hours from the starts of their shifts before starting a second meal period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to take on-duty meal periods of less than 30 minutes or that were otherwise not duty-free inasmuch as Employer failed to relieve Employee and/or other similarly situated and aggrieved employees of all of their duties or maintained control over them during that time; failing to count all times that Employer failed to provide Employee and/or other similarly situated and aggrieved employees duty-free 30-minute meal periods as time worked for the purposes of minimum wage and overtime wage payments; failing to pay Employee and/or other similarly situated and aggrieved employees one (1) hour of pay at their regular rates of compensation for each workday that the meal period was not provided; and by other methods to be discovered.

Employer's conduct violates Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 11 because Employer has knowingly and willfully refused to perform their obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(4) Failure to Authorize and Permit Rest Periods

Pursuant to California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001, § 12, California has required that employers shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period, that the authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, that a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours, and that authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. California has also required that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of and IWC Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not authorized and permitted.

Employee and/or other similarly situated and aggrieved are current and former non-exempt employees entitled to the protections of California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001. Employer failed to provide Employee and/or other similarly situated and aggrieved employees rest periods, or to pay one (1) additional hour of compensation at Employee and/or other similarly situated and aggrieved employees' regular rates of compensation for each workday that a rest period was not provided, as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past three and one-half (3 ½) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted first rest

period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past six (6) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted second rest period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past ten (10) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted third rest period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to take rest periods of less than 10 minutes or that were otherwise not duty-free inasmuch as Employer failed to relieve Employee and/or other similarly situated and aggrieved employees of all of their duties or maintained control over them during that time; failing to pay Employee and/or other similarly situated and aggrieved employees one (1) hour of pay at their regular rates of compensation for each workday that a rest period was not authorized and permitted; and by other methods to be discovered.

Employer's conduct violates Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001, § 12 because Employer has refused to perform its obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(5) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Pursuant to California Labor Code §§ 2802(a), 1198, and IWC Wage Order No. 4-2001, § 9, California requires has required that employers indemnify employees for all necessary expenditures or losses incurred by an employee in direct consequence of the discharge of her 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.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 2802(a), 1198, and IWC Wage Order No. 4-2001, § 9. Employer knowingly and willfully failed to indemnify Employee and/or other similarly situated and aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer including, but not limited to, by failing to reimburse Employee and/or other similarly situated and aggrieved employees for expenses they incurred in complying with Employer's order for Employee and/or other similarly situated and aggrieved employees to work from their homes or other remote locations, away from Employer's regular business locations, without providing them the supplies, tools, equipment and/or services to perform such work, and by other methods to be discovered.

Employer's conduct violates §§ 2802(a), 1198, and IWC Wage Order No. 4-2001, § 9 because Employer has knowingly and willfully refused to perform its obligations to indemnify Employee and/or other similarly situated and aggrieved for all monies they expended in necessary expenditures or losses incurred and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(6) Failure to Furnish Accurate Itemized Wage Statements

Pursuant to California Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 4-2001, California has required that employers semimonthly or at the time of each payment of wages furnish each of its employees an accurate itemized wage statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. California law has stated that an employee is deemed to suffer injury for purposes of Labor Code § 226(a) if the employer fails to provide accurate and complete information as required by any one or more of items of the foregoing nine (9) enumerated items and the employee cannot promptly and easily determine from the wage statement alone, *inter alia*, the amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to enumerated items (2) to (4), inclusive, (6), and (9).

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order

No. 4-2001, § 7. Employer failed to provide Employee and/or other similarly situated and aggrieved employees accurate itemized wage statements as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: failing to provide *accurate* writings showing each and every one of the nine (9) enumerated items required by Labor Code § 226(a) including as a result of the unrecorded and uncompensated off-the-clock minimum wage and overtime wage payments earned and due as alleged herein, the uncompensated meal period and rest period premium payments earned and due for each workday a meal period was not provided and each workday a rest break was not authorized and permitted as alleged herein, failing to itemize premium payments including payments for overtime, meal period, rest period and split shift premiums, failing to provide accurate writings enabling Employee and/or other similarly situated and aggrieved employees to promptly and easily determine from the wage statement alone their total hours worked, all deductions, the inclusive dates for which they were paid, and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and by other methods to be discovered.

Employer's conduct violates §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 4-2001, § 7 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other similarly situated and aggrieved with timely, accurate, and itemized wage statements and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(7) Failure to Timely Pay All Wages Due to Discharged and Quitting Employees

Pursuant to California Labor Code §§ 201(a), 201.3, 202, and 203, California has required that employers pay their employees all wages earned and unpaid at the time of discharge, or if an employee quits, not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting, and that if an employer willfully fails to timely pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but those penalty wages shall not continue for more than 30 days.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 201(a), 201.3, 202, and 203. Employer failed to timely pay Employee and/or other similarly situated and aggrieved employees all wages due at the times they were discharged or at the times they quit under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay all earned wages to Employee and/or other similarly situated and aggrieved employees in full; failing to pay all earned wages to Employee and/or other similarly situated and aggrieved employees at the time Employer discharged them or within 72 hours of the times they quit; and by failing to pay Employee and/or other similarly situated and aggrieved employees' wages as penalties from the due dates thereof at the same rate until paid; and by other methods to be discovered.

Employer's conduct violates §§ 201, 201.3, 202 and 203 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other similarly situated and aggrieved employees with timely and full payment of all wages earned and unpaid at the time of discharge or quitting.

(8) Engagement in Unlawful, Unfair or Fraudulent Business Acts or Practices

Pursuant to California Business and Professions Code §§ 17200, *et seq.*, also known as California's Unfair Competition Law ("UCL"), California has prohibited employers from engaging in unlawful, unfair or fraudulent business acts or practices, which may include an employer's violations of the California Labor Code sections, which prohibit employers from unlawfully withholding wages from an employee.³ Pursuant to § 17203, any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction to prevent the use or employment by any person of any practice which constitutes unfair competition, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Furthermore, § 17203 provides that any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of § 17204 and complies with Code of Civil Procedure § 382.

³ *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 177-178 (holding: "[w]e conclude that orders for payment of wages unlawfully withheld from an employee are also a restitutionary remedy authorized by section 17203. The employer has acquired the money to be paid by means of an unlawful practice that constitutes unfair competition as defined by section 17200. The employee is, quite obviously, a 'person in interest' (§ 17203) to whom that money may be restored.")

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees who, along with members of the general public, are entitled to the protections of California Business and Professions Code §§ 17200, *et seq.* Employer knowingly and willfully engaged in unlawful, unfair or fraudulent business acts or practices including, but not limited to, by (1) willfully failing and refusing to pay Employee and/or other similarly situated and aggrieved employees minimum wages earned and due, (2) willfully failing and refusing to pay Employee and/or other similarly situated and aggrieved employees overtime wages earned and due, (3) willfully failing and refusing to provide Employee and/or other similarly situated and aggrieved employees meal periods or pay premium wages in lieu thereof, (4) willfully failing and refusing to provide Employee and/or other similarly situated and aggrieved employees rest periods or pay premium wages in lieu thereof, (5) willfully failing and refusing to indemnify Employee and/or other similarly situated and aggrieved employees for necessary business expenses, (6) willfully failing and refusing to furnish Employee and/or other similarly situated and aggrieved employees with accurate itemized wage statements, and (7) willfully failing and refusing to timely pay Employee and/or other similarly situated and aggrieved employees all wages due at time of discharge or quitting. Furthermore, Employer has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations. As a result of Employer’s unfair and unlawful business practices, Employer has reaped unfair and illegal profits at the expense of Employee and/or other similarly situated and aggrieved employees and members of the general public.

Employer’s conduct violates California Business and Professions Code §§ 17200, *et seq.* because Employer has knowingly and willfully engaged in the foregoing Labor Code violations repeatedly, over a significant period of time, and in a systematic manner, to the detriment of Employee and/or other similarly situated and aggrieved employees and members of the general public.

(9) Failures to Comply with Labor Code and IWC Wage Order No. 4-2001 Provisions Warranting PAGA Civil Penalties

Pursuant to California Labor Code §§ 2698 *et. seq.*, also known as PAGA, California has stated that notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in §§ 2699⁴ and 2699.3.⁵

Employee on behalf of Employee and/or other aggrieved employees incorporates the preceding paragraphs into Employee’s allegations that follow, which give rise to Employer’s liability for PAGA civil penalties.⁶

⁴ Pursuant to Labor Code § 2699 subdivision (a), California has stated: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

⁵ Pursuant to Labor Code § 2699.5, California has stated: “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.4, 6310, 6311, and 6399.7.”

⁶ An employee affected by at least one labor code violation may pursue penalties on behalf of the state for unrelated violations by the same employer. (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.)

i. Underlying Violations of Labor Code § 201 (Failure to Timely Pay All Wages Due at Time of Discharge)

Labor Code § 201(a) provides, in part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 201(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due at the times they were discharged.

Employer's conduct violates Labor Code § 201(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all wages earned and unpaid at the time of discharge, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

ii. Underlying Violations of Labor Code § 201.3 (Failure to Timely Pay All Wages Due at Time of Discharge to a Temporary Services Employee During Employment and at Time of Discharge)

Labor Code § 201.3(b)(1)(A) provides: "Except as provided in paragraphs (2) to (5), inclusive, if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week. A temporary services employer shall be deemed to have timely paid wages upon completion of an assignment if wages are paid in compliance with this subdivision."

Labor Code § 201.3(b)(2) provides: "(2) If an employee of a temporary services employer is assigned to work for a client on a day-to-day basis, that employee's wages are due and payable at the end of each day, regardless of when the assignment ends, if each of the following occurs: [¶] (A) The employee reports to or assembles at the office of the temporary services employer or other location. [¶] (B) The employee is dispatched to a client's worksite each day and returns to or reports to the office of the temporary services employer or other location upon completion of the assignment. [¶] (C) The employee's work is not executive, administrative, or professional, as defined in the wage orders of the Industrial Welfare Commission, and is not clerical."

Labor Code § 201.3(b)(5) provides: "If an employee of a temporary services employer is assigned to work for a client and quits his or her employment with the temporary services employer, wages are due and payable as provided in Section 202."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 201.3. As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due during their employment and at the times they were discharged.

Employer's conduct violates Labor Code § 201.3 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all wages earned throughout their respective periods of employment, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.⁷

⁷ Labor Code § 210 provides: "(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. [¶] (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. [¶] (b) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund."

iii. Underlying Violations of Labor Code § 202 (Failure to Timely Pay All Wages Due at Time of Quitting or Within 72 Hours Thereof)

Labor Code § 202(a) provides, in part: "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 202(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due at the times they quit.

Employer's conduct violates Labor Code § 202(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all wages earned and unpaid at the time of quitting, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.⁸

iv. Underlying Violations of Labor Code § 203 (Failure to Pay Wages of the Employee as Continuing Penalty Up to 30 Days After Discharge or Quitting)

Labor Code § 203(a) provides, in part: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 203(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed perform its obligations to timely pay Employee and/or other aggrieved employees all final wages and the corresponding penalties that are still due as a result owed at their same respective rates of pay, for up to 30 days.

Employer's conduct violates Labor Code § 203(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all continuing wages as penalties, sometimes called "waiting time penalty" wages, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.⁹

⁸ Labor Code § 210 provides: "(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. [¶] (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. [¶] (b) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund."

⁹ Labor Code § 210 provides: "(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. [¶] (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. [¶] (b) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund."

v. Underlying Violations of Labor Code § 204 (Failure to Timely Pay All Wages Due During Employment)

Labor Code § 204(a) provides, in part: "All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 204(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due throughout their respective periods of employment including on days that Employer designated in advance as the regular paydays.

Employer's conduct violates Labor Code § 204(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all wages earned throughout their respective periods of employment, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹⁰

vi. Underlying Violations of Labor Code § 226 (Failure to Furnish Accurate Itemized Wage Statements and to Maintain and Timely Provide Accurate Employment Records)

In addition to requiring employers to provide employees with accurate itemized wage statements, discussed above, Labor Code § 226(a) provides, in part: "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. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision."¹¹

Labor Code § 226(b) provides: "An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee."

Labor Code § 226(c) provides: "An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision

¹⁰ Labor Code § 210 provides: "(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. [¶] (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. [¶] (b) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund."

¹¹ Labor Code § 226.3 provides: "Any employer who violates subdivision (a) of Section 226 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, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake."

is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made."¹²

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 226. As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to provide Employee and/or other aggrieved employees accurate itemized wage statements and failed to create and maintain accurate records, as required under Labor Code § 226(a). Employee is further informed and believes that Employer failed to provide Employee and/or other aggrieved employees copies of their employment records upon their oral and written requests as soon as practicable, but no later than 21 calendar days from the date of the request, as required under Labor Code § 226(b) and (c).

Employer's conduct violates Labor Code § 226 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with accurate itemized wage statements, to maintain accurate employment records, and to timely and fully comply with written or oral requests for inspection or receipts of copies of employment records, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

vii. Underlying Violations of Labor Code § 226.7 (Failure to Timely Pay All Meal Period and Rest Period Wages Due During Employment)

Labor Code § 226.7(c) provides: "If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 226.7(c). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to provide Employee and/or other aggrieved employees one (1) hour of pay at their regular rates of compensation for each workday that a meal period was not provided and for each workday that a rest period was not authorized or permitted.

Employer's conduct violates Labor Code § 226.7(c) because Employer has knowingly and willfully refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

viii. Underlying Violations of Labor Code § 510 (Failure to Pay All Overtime Wages Due)

Labor Code § 510(a) provides, in part: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 510(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to pay Employee and/or other aggrieved employees for all overtime hours worked.

Employer's conduct violates Labor Code § 510 because Employer has refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹³

¹² Labor Code § 226(f) provides: "A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer."

¹³ California Labor Code § 558(a) and subparagraphs (1) and (2) provide "(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision

ix. Underlying Violations of Labor Code § 512 (Failure to Provide Timely First and Second Meal Periods)

Labor Code § 512(a) provides: "An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 512(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to provide Employee and/or other aggrieved employees timely, uninterrupted, and duty-free first and second meal periods during their shifts.

Employer's conduct violates Labor Code § 512 because Employer has refused to perform its obligations to provide Employee and/or other aggrieved employees timely, uninterrupted, and duty-free first and second meal periods during their shifts, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹⁴

x. Underlying Violations of Labor Code § 1102.5 (Retaliation for Disclosing Information Reasonably Believed to be a Violation of State or Federal Law)

Labor Code § 1102.5(a) provides: "An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

Labor Code § 1102.5(b) provides: "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

Labor Code § 1102.5(c) provides: "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

Labor Code § 1102.5(d) provides: "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment."

regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. [¶] (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

¹⁴ California Labor Code § 558(a) and subparagraphs (1) and (2) provide "(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. [¶] (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1102.5. Employee is informed and believes that Employer adopted and/or enforced rules, regulations or policies designed to prevent or retaliate against Employee and/or other aggrieved employees from disclosing violations of, or participating in investigations, hearings, or inquiries concerning, Employer's violation of California wage and hour laws as alleged herein or other workplace conditions and/or occurrences including complaints about Employer's failure to reimburse or indemnify for expenditures incurred or suffered by Employee and/or other aggrieved employees.

Employer's conduct violates Labor Code § 1102.5 because Employer has refused to perform its obligations to refrain from adopting or enforcing rules designed to prevent disclosure of California wage and hour violations and/or retaliating against employees to make such disclosures, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹⁵

xi. Underlying Violations of Labor Code § 1174(d) (Failure to Keep Accurate Payroll Records in a Central Location in California)

Labor Code § 1174 and subdivision (d) provide: "Every person employing labor in this state shall: [¶] . . . (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1174(d). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to keep Employee and/or other aggrieved employees' accurate payroll records including the hours they worked daily.

Employer's conduct violates Labor Code § 1174(d) because Employer has refused to perform its obligations to keep accurate payroll records, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹⁶

xii. Underlying Violations of Labor Code § 1197 (Failure to Pay All Minimum Wages Including Split Shift Wages)

Labor Code § 1197 provides: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1197. As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to pay Employee and/or other aggrieved employees for all hours worked, including hours entitling them to minimum wages including one hour of minimum wages in addition to the minimum wage for that workday when Employee and and/or other aggrieved employees worked split shifts as required under IWC Wage Order No. 4-2001, § 4 (minimum wages) or the applicable IWC Wage Orders.

Employer's conduct violates Labor Code § 1197 because Employer has refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, including hours entitling them to minimum wages, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹⁷

¹⁵ California Labor Code § 1102.5(f) provides: "(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section."

¹⁶ California Labor Code § 1174.5 provides "Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500)."

¹⁷ California Labor Code § 1197.1(a) and subparagraphs (1) to (3) provide: "(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to

xiii. Underlying Violations of Labor Code § 2802 (Failure to Indemnify Employees)

Labor Code § 2802(a) provides: "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."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 2802. As stated above, and for the reasons set forth above, Employee is informed and believes that knowingly and willfully failed to indemnify Employee and/or aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties.

Employer's conduct violates Labor Code § 2802 because Employer has refused to perform its obligations to indemnify Employee and/or other aggrieved for all monies they expended in necessary expenditures or losses incurred, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.

* * *

This notice shall further represent Employee's reasonable attempt to settle Employee's dispute with Employer prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, this notice serves to apprise Employer of Employee's aforementioned grievances and the proposed remedies as detailed below, while affording Employer reasonable opportunity to meet Employee's demands.

Demand is hereby made that Employer shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Employer shall pay Employee and all other similarly-situated persons employed by Employer at any time during the past 48 months back pay and compensation for the above-referenced violations.
2. Employer shall comply with all California labor laws and ensure that its/their non-exempt employees are paid proper overtime compensation and given required meal and rest periods.
3. Employer shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of minimum wage hours that were not paid, the number of overtime wage hours that were not paid, the number of meal periods which were not provided, the number of rest periods which were not authorized and permitted, and the number of employees who were required to pay for wear requirements, personal cellular phone use, and mileage or personal vehicle use requirements or other expenditures in the discharge of their duties, the number of employees who were not paid all wages due at time of discharge or quitting, with the investigation to be completed within 60 days.
4. Employer shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Employer also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.
5. Employer shall reimburse those employees who were forced to pay for any business expenses incurred for Employer's benefit, as well as those items employees were compelled and coerced to purchase from Employer or other persons in relation to their employment.
6. Employer shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: [¶] (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. [¶] (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. [¶] (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee."

The Kick Law Firm, APC

LWDA, DIR; Branded Online, Inc. ("Employer")

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7. Employer shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

8. Employer shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.* including, but not limited to, penalties under Labor Code §§ 210, 226(f), 226.3, 558(a), 1102.5(f), 1174.5, 1197.1, and 2699 and Wage Order No. 4-2001, § 20.

If the Department of Industrial Relations including the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, then please notify this office of that decision by certified mail addressed to The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, California 90049. Additionally, please advise us if the Agency or Employer require additional information regarding Employee's complaints.

Thank you for your prompt attention to this matter.

Very truly yours,

THE KICK LAW FIRM, APC

A handwritten signature in blue ink, appearing to read 'Taras Kick', is written over the printed name.

TARAS KICK
DANIEL J. BASS
ROY K. SUH

Attorneys for YAZMIN GONZALEZ