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Attorneys for Plaintiff DANIEL JACOBS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DANIEL JACOBS, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

RUSH MEDIA COMPANY, LLC, a
Wisconsin limited liability company; XLT
MANAGEMENT SERVICES, INC., an
Illinois corporation; and DOES 1 through 30,
inclusive,

Defendants.

Case No. 20STCV32350

**DECLARATION OF SHANI O. ZAKAY,
ESQ., IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT**

Hearing Date: November 12, 2021

Hearing Time: 10:30 AM

Honorable Judge Daniel J. Buckley
Department 1

Trial Date: Not Set

Action Filed: August 25, 2020

1 I, SHANI O. ZAKAY, declare as follows:

2 1. I am an attorney at the Zakay Law Group, APLC and co-lead counsel of record for
3 Plaintiff in this matter. As such, I am fully familiar with the facts, pleadings and history of the
4 matter. The following facts are within my own personal knowledge, and if called as a witness, I
5 could testify competently to the matters stated herein.

6 2. This declaration is being submitted in support of the motion by Plaintiff DANIEL
7 JACOBS (“Plaintiff”) for an order: (1) preliminarily approving the proposed settlement of this class
8 and PAGA action; (2) approving the form and method for providing class-wide notice; (3) directing
9 that notice of the proposed settlement be given to the class; and (4) scheduling a final approval
10 hearing date to consider Plaintiff’s motion for final approval of the settlement and entry of
11 Judgment, and Plaintiff’s motion for approval of attorneys’ fees and litigation expenses. Attached
12 hereto as Exhibit #1 is a copy of the fully executed Joint Stipulation of Settlement of Class Action
13 Claims and Release of Claims (“Agreement”) along with exhibits thereto. This Declaration
14 incorporates by reference the definitions in the Agreement, and all terms defined therein shall have
15 the same meaning as set forth in the Agreement.

16 A. Fairness of Settlement and Settlement Terms

17 3. As consideration for this Settlement, the total amount to be paid by Defendants is
18 Three Hundred Thirty Thousand Dollars and Zero Cents (\$330,000) (the “Total Settlement
19 Amount”). (Agreement at ¶ III(A)(1)). The Total Settlement Amount will settle all issues pending
20 in this litigation between the Plaintiff and the California Class (the “Class”), on the one hand, and
21 the Defendants and the Released Parties, on the other hand, including: payment of all Individual
22 Settlement Payments, the Class Representative Service Payment Awards, the Class Counsel Award,
23 Class Counsel Litigation Expenses Payment, the payment to the Aggrieved Employees and
24 California Labor Workforce Development Agency (“PAGA Payment”), and the expenses of the
25 Settlement Administrator. (*Id.*). The Total Settlement Amount does not include Defendants’ share
26 of employer payroll taxes, which they shall pay separately. (*Id.*) The Settlement is all-in with no
27 reversion to Defendants and no need to submit a claim form. (*Id.*)
28

1 4. On May 4, 2021, the parties participated in a mediation before Hon. William C. Pate
2 (Ret.) a respected jurist and mediator of wage and hour class actions. In preparation for the
3 mediation, Defendants provided Class Counsel with necessary records and information for the
4 members of the Class. Defendants produced a large sample consisting of pay records and time
5 records. Defendants also produced Defendants' relevant employment policies, including
6 compensation policies and timekeeping policies. Plaintiff analyzed the data with the help of an
7 expert Berger Consulting Group ("Berger"). At the conclusion of the mediation, all Parties agreed
8 to a Mediator's proposal and the basic terms were set forth in a signed Memorandum of
9 Understanding. The Parties then prepared the full Agreement, which was signed by all counsel and
10 the Parties. The Parties then prepared the full Agreement, which was signed by all counsel and the
11 Parties and is now presented to this Court for preliminary approval. Plaintiff and Class Counsel
12 believe that this Settlement is fair, reasonable, and adequate.

13 5. The Settlement is fair, reasonable, and adequate, and should be preliminarily
14 approved. Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of
15 the Agreement and enter the proposed order submitted herewith.

16 6. The Total Settlement Amount to be paid by Defendants is Three Hundred Thirty
17 Thousand Dollars (\$330,000.00). Under the Settlement, the Total Settlement Amount consists of
18 the following elements: (1) Individual Settlement Payments to Participating Class Members, (2)
19 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, (3) Settlement
20 Administration Costs, (4) the PAGA Payment, and (5) the Class Representative Service Award to
21 the Plaintiff. The Total Settlement Amount does not include Defendants' share of employer payroll
22 taxes, which Defendants shall pay to the Administrator separately. The Total Settlement Amount
23 shall be all-in with no reversion to Defendants.

24 7. Within thirty (30) calendar days after final approval and the Judgment becoming
25 final, the Defendants will fund the Total Settlement Amount. Within approximately thirty (30)
26 calendar days thereafter, the Settlement Administrator will pay: the Participating Class Members
27 their Individual Settlement Payments; Class Counsel their Class Counsel Fees Payment and the
28 Class Counsel Litigation Expenses Payment; the Aggrieved Employees their portion of the PAGA

1 Payment, the LWDA its portion of the PAGA Payment; and the Settlement Administrator its
2 Settlement Administration Costs, all in the amounts approved by the Court.

3 8. The Net Settlement Amount shall equal the net amount available for Settlement
4 shares to Participating Class Members from the Total Settlement Amount after deducting the Court-
5 approved amounts for the Class Award, Class Representative Service Award, PAGA Settlement,
6 and Settlement Administration Costs. The Settlement Administrator will pay the Individual
7 Settlement Payments to the Class Members. (Agreement at ¶III(K)).

8 9. The Individual Settlement Payments will be calculated based on the number of Work
9 Shifts worked during the Class Period. (Agreement at ¶III(M)(1)). The Individual Settlement
10 Payment for each Class Member will be calculated from the Net Settlement Amount as follows: (1)
11 respective Work Shifts for each Class Member will be divided by the total Work Shifts for all Class
12 Members, resulting in the Payment Ratio for each Class Member; (2) each Class Member's Payment
13 Ratio is then multiplied by the Net Settlement Amount to calculate each Class Member's estimated
14 Individual Settlement Payments. The entire Net Settlement Amount shall be distributed.

15 10. Class Members will have forty-five (45) days after the mailing of the Class Notice
16 to exclude themselves or submit written objections. (Agreement at ¶II(BB)). Class Members may
17 choose to exclude themselves and opt-out of the Settlement by following the directions set forth in
18 the Class Notice. (Agreement at ¶III(L)(7)). All Class Members who do not "opt-out" will be
19 deemed Settlement Class Members who will be bound by the Settlement and will be entitled to
20 receive an Individual Settlement Payment. (Agreement at ¶II(FF)). Finally, the Class Notice will
21 advise the Class Members of their right to object to the Settlement.

22 11. If a check is returned to the Settlement Administrator, the Settlement Administrator
23 shall re-mail the check to any forwarding address provided by the Class Member. (Agreement at
24 ¶III(L)(4)). If a Participating Class Member does not cash their Individual Settlement Payment
25 within ninety (90) days after the Settlement Administrator's last mailing to the Participating Class
26 Member, the Settlement Administrator will send the affected Participating Class Member a notice
27 informing him or her that unless the check is cashed in the next ninety (90) days, the check will
28 expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not

1 cashed. (Agreement at ¶III(M)(1)(f)). If a Class Member's Individual Settlement Payment check
2 is not cashed within one hundred eighty (180) days after its mailing to the Class Member, the
3 Settlement Administrator will transfer the funds to the State of California Controller in accordance
4 with CCP §1500 with the Participating Class Member's identity to be held for the Participating
5 Class Member pursuant to the California Unclaimed Property Law. (Agreement at ¶III(M)(8)). \

6 12. The Parties have agreed to use ILYM Group as the Settlement Administrator for the
7 Settlement. (Agreement at ¶I(DD)). Payment of the expenses of the Settlement Administrator from
8 the Total Settlement Administrator shall be made for the expenses of effectuating and administering
9 the Settlement. ILYM Group shall receive payment for services in an amount not to exceed
10 \$11,000. (Agreement at ¶III(M)(5)).

11 13. Subject to Court approval, the Agreement provides for Class Counsel to be awarded
12 a sum not to exceed one-third of the Total Settlement Amount currently estimated to be
13 \$110,000.00, as their Class Counsel Fees Payment. (Agreement at ¶III(M)(10)). Class Counsel's
14 award for attorneys' fees will be divided equally between Class Counsel (50% to JCL Law Firm,
15 APC and 50% to Zakay Law Group, ALPC). (Agreement at ¶ I(E)). Class Counsel will also be
16 allowed to apply separately for an award of litigation expenses incurred in the prosecution and
17 settlement of the Action currently not exceeding \$15,000. (Agreement at ¶III(M)(10)). In support
18 of this request, Class Counsel will provide evidentiary support, including lodestar.

19 14. Subject to Court approval, the Agreement provides for the payment of Class
20 Representative Service Payment of no more than \$10,000 for Plaintiff, or any lesser amount as may
21 be approved by the Court. (Agreement at ¶III(M)(9)).

22 15. Subject to Court approval, \$20,000 will be allocated from the Total Settlement
23 Amount for settlement of civil penalties under PAGA. (Agreement at ¶III(M)(11)). Pursuant to
24 the requirements of Labor Code §2699(i) the PAGA Payment shall be allocated \$15,000 (75%) to
25 the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil penalties and
26 \$5,000 (25%) will be distributed to the Aggrieved Employees (the "Aggrieved Employee
27 Payment").

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1 B. Procedural History of the Litigation

2 16. On August 20, 2020, Plaintiff filed a Notice of Violations with the LWDA and
3 served the same on Defendants. The Notice to the LWDA included a proposed Complaint which
4 Plaintiff planned on filing with the Court, which asserted the Defendant: (1) Violated California
5 Business and Professions Code § 17200 *et seq.*; (2) Failed to pay minimum wages in violation of
6 California Labor Code §§ 1194, 1197, and 1997.1; (3) Failed to pay overtime wages in violation of
7 California Labor Code §§ 510, *et seq.*; (4) Failed to provide meal periods in violation of California
8 Labor Code §§ 226.7 & 512, and IWC Wage Order; (5) Failed to provide rest periods in violation
9 of California Labor Code §§ 226.7 & 512, and IWC Wage Order; (6) Failed to provide accurate and
10 complete itemized wage statements in violation of California Labor Code §226; (7) Failed to
11 provide wages when due in violation of California Labor Code §§ 201, 202, and 203; and (8) Failed
12 to reimburse employees for required expenses in violation of California Labor Code §2802.

13 17. On August 25, 2020, Plaintiff filed a class action Complaint against Defendants in
14 the Superior Court of the State of California, County of Los Angeles. Plaintiff alleges that
15 Defendants violated and continue to violate the California Labor Code protections applicable to
16 California employees including because Defendants have misclassified some California employees
17 as independent contractors and otherwise underpaid wages, including overtime wages, failed to
18 provide meal and rest breaks, accurate wage statements and final pay. On November 2, 2020,
19 Plaintiff filed a First Amended Complaint adding a claim for penalties pursuant to PAGA.

20 18. Plaintiff sought to represent a putative class of all of the current and former non-
21 exempt employees and independent contractors that worked for Defendant Rush, including those
22 that received payroll services from XLT Management Services, Inc., during the California Class
23 Period (the “California Class”). The Class Period is defined as the period between August 20, 2016,
24 to July 4, 2021. The Action seeks alleged unpaid wages, penalties, attorneys’ fees and costs, and
25 any other equitable or legal relief allegedly due and owing to Plaintiff and other Class Members by
26 virtue of the foregoing claims.

27 19. Prior to mediation, the Parties engaged in investigation and the exchange of
28 documents and information in connection with the Action. As part of this process, Defendants

1 provided a significant sample of time records and payroll records, as well as other documents and
2 information, to Class Counsel to review and analyze. On May 4, 2021, the Parties participated in a
3 mediation presided over by Hon. William C. Pate (Ret.) a respected jurist and mediator of wage and
4 hour class actions. At the conclusion of the mediation, all Parties agreed to the Mediator’s proposal
5 and the Parties documented the agreement in the form of a Memorandum of Understanding. The
6 Parties then prepared the Settlement Agreement, which was signed by the Parties and is now
7 presented to this Court for preliminary approval.

8 20. For purposes of this Settlement, the “Class” is defined as “all of the current and
9 former non-exempt employees and independent contractors that worked for Defendant Rush,
10 including those that received payroll services from XLT Management Services, Inc., in California
11 during the Class Period.” (Agreement at ¶I(G)). The Class Period is the period of time from August
12 20, 2016, to July 4, 2021. (Agreement at ¶I(H)).

13 21. Although a resolution has been reached, Defendants deny any liability or
14 wrongdoing of any kind associated with the claims alleged in the Action and further deny that, for
15 any purpose other than Settlement, the Action is appropriate for class treatment. Defendants
16 contend, among other things, that they correctly classified Class Members as independent
17 contractors, that they have correctly and fully compensated the Class Members for wages, provided
18 compliant meal and rest periods to the Class Members, provided complete and accurate itemized
19 wage statements and final payments, and complied at all times with the California Labor Code, and
20 the applicable Wage Orders. Further, “[t]he Parties agree to certification of the Class for purposes
21 of this Settlement only.”

22 22. Class Counsel has conducted a thorough investigation into the facts of the class
23 action. Class Counsel has diligently evaluated the Class Members’ claims against Defendants.
24 Class Counsel reviewed the production of documents from the Defendants. Prior to mediation,
25 counsel for Defendants provided Class Counsel with access to the necessary data and information
26 for Class Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review
27 of a significant sample of time records and data with the assistance of an expert. Based on the
28 foregoing data and their own independent investigation, evaluation, and experience, Class Counsel

1 believe that the terms of the Settlement set forth in the Agreement are fair, reasonable, and adequate
2 and are in the best interest of the Class in light of all known facts and circumstances, including the
3 risk of significant delay, the defenses asserted by Defendants, and potential appellate issues.

4 C. Risks of Continued Litigation and Standards for Approval

5 23. On May 4, 2021, the Parties attended an arms-length private mediation before Hon.
6 William C. Pate (Ret.) a respected jurist and mediator of wage and hour class actions. In preparation
7 for the mediation, Defendants provided Class Counsel with necessary records and information for
8 the members of the Class. Defendants produced a large sample consisting of pay records and time
9 records. Defendants also produced Defendants' relevant employment policies, including
10 compensation policies and timekeeping policies. Plaintiff analyzed the data with the help of an
11 expert Berger Consulting Group ("Berger"). At the conclusion of the mediation, all Parties agreed
12 to a Mediator's proposal and the basic terms were set forth in a signed Memorandum of
13 Understanding. The Parties then prepared the full Agreement, which was signed by all counsel and
14 the Parties. Plaintiff and his Counsel believe that this Settlement is fair, reasonable, and adequate.

15 24. Class Counsel has conducted a thorough investigation into the facts of the class
16 action. Class Counsel has diligently evaluated the Class Members' claims against Defendants.
17 Class Counsel reviewed the production of documents from the Defendants. Prior to mediation,
18 counsel for Defendants provided Class Counsel with access to the necessary data and information
19 for Class Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review
20 of a significant sample of time records and data with the assistance of an expert. Based on the
21 foregoing data and their own independent investigation, evaluation, and experience, Class Counsel
22 believe that the Settlement is fair, reasonable, and adequate and are in the best interest of the Class
23 in light of all known facts and circumstances, including the risk of significant delay, the defenses
24 asserted by Defendants, and potential appellate issues.

25 25. Plaintiff and Class Counsel recognize the expense and length of continuing to litigate
26 and trying the Action against Defendants through possible appeals which could take several years.
27 Class Counsel have also taken into account the uncertain outcome and risk of litigation, especially
28 in complex actions such as the one here. Class Counsel are also mindful of, and recognize, the

1 inherent problems of proof under, and asserted defenses to, the claims asserted in the Action. Based
2 upon their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in
3 the Agreement is in the best interest of the Class Members.

4 26. The amounts to compensate the Class Members for the alleged violations at the time
5 this Settlement was negotiated were calculated by Berger, Plaintiff's damage expert. Plaintiff used
6 Berger to analyze the data and determine the potential damages for the employees. For the Class,
7 Plaintiff estimates that Defendants were subject to maximum liability for damages in the amount of
8 \$847,986, consisting of \$220,750 for unreimbursed business expenses, \$238,760 for unpaid wages,
9 and \$388,476 for meal and rest break periods. In addition, Plaintiff calculated that Defendants
10 could be liable for \$1,907,914 for waiting time penalties and \$83,150 for wage statement penalties.
11 Finally, Plaintiff's expert calculated that Defendants could be liable for *PAGA penalties* in an
12 amount of \$1,266,650. Consequently, the Settlement of approximately \$330,000 represents almost
13 39% of the value of the maximum actual class-wide damages at issue (\$847,986). Furthermore, the
14 Settlement represents almost 11.6% of the maximum class-wide damages **and** penalties to the Class
15 (\$2,839,000), assuming all these amounts could be proved at trial. Given the amount of the
16 Settlement as compared to the potential value of claims in this case, the Settlement is fair and
17 reasonable. Clearly, the goal of this litigation to provide compensation to Class Members for unpaid
18 time and for allegedly missed meal and rest breaks has been met.

19 27. Here, several defenses asserted by Defendants presented serious threats to the claims
20 of the Plaintiff and other Class Members. In order to recover any penalties, Plaintiff would be
21 required at trial to prove each of the underlying Labor Code violations. Specifically, Plaintiff would
22 need to prove as to individuals who worked for Defendants that he or she was misclassified as an
23 independent contractor, and that he or she was not properly compensated for minimum wages, meal
24 break wages, rest break wages, expenses, and overtime wages. To do so, Plaintiff would require
25 proof of Labor Code violations to each of the above.

26 28. Defendants maintain that Plaintiff and other Class Members were properly classified
27 as independent contractors and were properly compensated, and that Defendants did not violate the
28 Labor Code as to any of them. Given Defendants' potential defenses to the Labor Code violations,

1 and the risks and costs of continued litigation, Plaintiff and Class Counsel believe that the
2 Settlement Amount is fair and reasonable. While Plaintiff believes that these defenses, and others,
3 could be overcome, Defendants maintain these defenses have merit and therefore present a serious
4 risk to recovery for the Class.

5 29. Further supporting the fairness and reasonableness of the settlement is Defendants'
6 financial condition. Defendants provide video, field production and post-production packaging
7 services for televised sporting events (Rush Media, LLC) and related payroll services (XLT
8 Management Services, Inc.). The production business has suffered significantly as a result of the
9 effects of the COVID-19 virus and the Governor's order prohibiting large events and gatherings,
10 which resulted in the cancellation of many sporting events. In fact, as a result of the pandemic,
11 many of the Defendants' operations were largely shut down for more than a year. Considering the
12 resulting financial hardship, the settlement provides great value for the Class Members, while also
13 allowing Defendants to continue in business. Further, during the time that many of Defendants'
14 operations were mandated closed by state and local authorities during the COVID-19 pandemic, the
15 alleged violations could not have occurred.

16 30. Defendants argued that they properly classified Plaintiff and the Class Members as
17 independent contractors. Defendants further argued that even if they misclassified the Class
18 Members, they did not deprive those Class Members of any wages or meal and rest breaks.

19 31. Defendants argued that the Supreme Court decision in *Brinker v. Superior Court*, 53
20 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value, and class
21 certifiability as to the meal and rest period claims. A major component of the damages alleged to
22 have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and
23 during the mediation, Defendants aggressively argued that Defendants' policies and culture
24 afforded the Class Members an opportunity to take timely meal and rest breaks, and that employees
25 like the Plaintiff *chose* not to take compliant breaks. Defendants argued, therefore, that under the
26 *Brinker* decision it has no liability for the missed breaks whatsoever. Defendants argued that it
27 adopted and strictly enforced lawful policies, afforded Plaintiff and the Class Members compliant
28 meal and rest breaks, and had a system in place to pay premiums when breaks were missed, short

1 or untimely. Finally, the court may find remitter/reduction of the statutory damages appropriate.
2 See e.g. *Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL
3 3118505, at *5 (E.D. Pa. 2007). If successful, these defenses could eliminate or substantially reduce
4 any recovery to the Class. While Plaintiff believes that these defenses, and others, could be
5 overcome, Defendants maintain these defenses have merit and therefore present a serious risk to
6 recovery for the Class.

7 32. There was also a significant risk that, if the Action was not settled, Plaintiff would
8 be unable to obtain class certification and thereby not recover on behalf of any employee other than
9 himself. Defendants argued that the individual experience of each employee varied with respect to
10 the alleged claims. While other cases have approved class certification of wage and hour claims,
11 class certification in this action would have been hotly disputed and was by no means a foregone
12 conclusion. Finally, even if class certification was successful, as demonstrated by the California
13 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
14 significant hurdles to overcome for a class-wide recovery even where the class has been certified.

15 33. The relief provided in the Settlement will benefit all members of the Class who do
16 not opt out. The Settlement does not improperly grant preferential treatment to the Plaintiff or
17 segments of the Class in any way. Each Participating Class Member will be entitled to a payment
18 based on the plan of allocation described herein. Each Participating Class Member's Individual
19 Settlement Payment will be determined based upon the shifts worked by that employee during the
20 prescribed Class Period.

21 34. Plaintiff will apply to the Court for the Class Representative Service Award of not
22 more than \$10,000 in consideration for his service, and for the risks undertaken on behalf of the
23 Class. (Agreement at ¶III(M)(9)). Plaintiff performed his duties admirably by working with Class
24 Counsel. The requested Plaintiff's service payment is well within the accepted range of awards for
25 purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist.
26 LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
27 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
28 (approving \$10,000 service award where class member recovery was \$375); *Rausch v. Hartford*

1 *Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award
2 of \$10,000 where class member recoveries were as little as \$150); *Louie v. Kaiser Foundation*
3 *Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service
4 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
5 *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
6 \$100,000.00 in enhancements). As explained in *Glass*, service awards are routinely awarded to
7 class representatives to compensate the employees for the time and effort expended on the case, for
8 the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an
9 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

10 35. The stage of the proceedings at which this Settlement was reached also militates in
11 favor of preliminary approval and ultimately, final approval of the settlement. Class Counsel has
12 conducted a thorough investigation into the facts of the class action. Class Counsel began
13 investigating the Class Members' claims before this action was filed. Class Counsel performed
14 significant review and analysis of Defendants' documents, time records, and pay records. Class
15 Counsel engaged in a thorough research and analysis of the relevant claims and data. Class Counsel
16 were also experienced with the claims at issue here, as Class Counsel previously litigated and settled
17 similar claims in numerous other actions. Accordingly, the Settlement did not occur until Class
18 Counsel possessed sufficient information to make an informed judgment regarding the likelihood
19 of success on the merits and results that could be obtained through further litigation.

20 36. Based on the foregoing data and their own independent investigation and evaluation,
21 Class Counsel are of the opinion that the settlement with Defendants for the terms set forth in the
22 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all
23 known facts and circumstances, including the risk of significant delay, defenses asserted by
24 Defendants, and numerous potential appellate issues. There can be no doubt that Counsel for all
25 Parties possessed sufficient information to make an informed judgment regarding the likelihood of
26 success on the merits and the results that could be obtained through further litigation.

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28 ///

1 D. Class Certification Issues

2 37. Plaintiff contends that the proposed settlement meets all the requirements for class
3 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
4 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
5 should conditionally certify the Classes for settlement purposes only, defined as follows:

6 The California Class:

7 “all of the current and former non-exempt employees and independent contractors that
8 worked for Defendant Rush, including those that received payroll services from XLT
9 Management Services, Inc., in California during the Class Period.” (Agreement at ¶I(G)).

10 The California Class Period is the period from August 20, 2016, to July 4, 2021. The Parties
11 estimate that there are 397 California Class Members who collectively worked approximately 4,704
12 shifts.

13 38. **Numerosity** – Here, the approximately 397 current and former employees and
14 independent contractors that comprise the California Class and are identified based on Defendants’
15 records and are sufficiently numerous for class certification. All of these class members are
16 ascertainable because they can readily be identified through examination of Defendants’
17 employment and other files. Given that the class consist of approximately 397 members, numerosity
18 is easily satisfied. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members
19 sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48
20 members satisfies numerosity requirement.)). Moreover, the current and former employees and
21 independent contractors that comprise the Class can be identified based on Defendants’ records and
22 are sufficiently numerous for class certification.

23 39. **Common Issues Predominate** – Predominance of common issues of law or fact
24 does not require that the common issues be dispositive of the entire controversy or even that they
25 be dispositive of all liability issues. (1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)).
26 “Predominance is a comparative concept, and ‘the necessity for class members to individually
27 establish eligibility and damages does not mean individual fact questions predominate.’” (*Sav-On*,
28 34 Cal. 4th at 334).

1 40. Commonality exists if there is a predominant common legal question regarding how
2 an employer's policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App.
3 4th 1524, 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies
4 on its drivers.”)). Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at the
5 certification stage since the question is “essentially a procedural one that does not ask whether an
6 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
7 (2003)).

8 41. Here, Plaintiff contends that common questions of law and fact are present, and
9 specifically, whether Defendants' employment practices were lawful, whether Defendants
10 misclassified Class Members as independent contractors, whether Defendants failed to properly
11 provide and/or pay for meal and rest periods, whether Defendants paid for all time worked, whether
12 Defendants provided accurate wage statements, whether Defendants failed to pay all wages, and
13 whether the Class is entitled to compensation and related penalties.

14 42. **Typicality** – In the instant case, Plaintiff contends that the typicality requirement is
15 fully satisfied. The Plaintiff, like the other members of the Class, worked for Defendant Rush
16 Media, LLC and received payroll services from XLT Management Services as an employee and/or
17 independent contractor and is a member of the Class. Plaintiff was subject to the same employment
18 practices concerning his classification, payment of wages, and the meal and rest periods, and
19 received similar wage statements as the other class members. Thus, the claims of the Plaintiff and
20 the Class Members arise from the same course of conduct by the Defendants, involve the same
21 employment policies, and are based on the same legal theories.

22 43. **Adequacy** – The Class Members are adequately represented because Plaintiff and
23 Class Counsel (a) do not have any conflicts of interest with other class members, and (b) will
24 prosecute the case vigorously on behalf of the class. (*See Hanlon* 150 F.3d at 1020). First, Plaintiff
25 is well aware of his duties as representative of the Class and has actively participated in the
26 prosecution of this case to date. He effectively communicated with Class Counsel, provided
27 documents to them, and participated in informal discovery, investigation, and negotiations in the
28 Action. Second, Plaintiff retained competent counsel who are experienced in employment class

actions. Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories.

E. The Proposed Method of Class Notice is Appropriate

44. The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit A to the Agreement). The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated settlement payment for each of the Class Members; (v) the amount of attorneys' fees and litigation expenses to be sought; (vi) the amount of the Plaintiff's Class Representative Service Payment requests; (vii) the amount being paid to the LWDA; and (viii) the Settlement Administration Costs.

45. The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Class Notice is mailed to them to request exclusion or to submit an objection. The Class Members will be given an opportunity to object to the terms of the Agreement and/or the request for attorneys' fees and costs and to participate at the final approval hearing, in accordance with the instructions set forth in the Class Notice. Class Members will be instructed to only contact the Settlement Administrator and Class Counsel and not the Court. Class Members who do not opt out will automatically receive a settlement payment. The Class Members are highly skilled and educated broadcast production personnel who must speak and read in English fluently in order to perform their job. Therefore, Spanish or other alternative language notice is not necessary and is not included. This notice program was designed to meaningfully reach the Class Members and advise them of all pertinent information concerning the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due process, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto. The Class Notice provides information on the terms and provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date, time, and place of the final settlement approval

1 hearing; and the procedure and deadline for submitting comments, objections, and requests for
2 exclusion. The Class Notice complies with Rules of Court 3.766 and 3.769(f).

3 46. The Class Notice reflects the Court's current social distancing procedures for
4 attendance at hearings and review of court files.

5 F. Class Counsel's Experience

6 47. Class Counsel are experienced in prosecuting class action lawsuits and can
7 competently represent the Class. Attorneys from Class Counsel's firms have extensive class
8 litigation experience, handling a number of class action and complex commercial cases and have
9 acted both as counsel and as lead and co-lead counsel in a variety of these matters. Class Counsel
10 have successfully prosecuted and obtained significant recoveries in numerous class action lawsuits
11 and other lawsuits involving complex issues of law and fact. Class Counsel have collectively been
12 involved as class counsel in over two hundred class action matters, including many wage and hour
13 class actions. Class Counsel has been found to be adequate counsel by the courts throughout
14 California. A true and correct copy of the resume of Zakay Law Group, APC is attached hereto as
15 Exhibit #2. Thus, the adequacy requirement is satisfied.

16 G. Additional Issues

17 48. **National Change of Address** – The Settlement Administrator is required to perform
18 a National Change of Address search on any Class Notice Packet returned by the U.S. Postal Service
19 as non-deliverable, and re-mail the Class Notice Packet to the Class Member's new address under
20 the Settlement Agreement.

21 49. **Information Received** – In this case, Plaintiff received all of the information needed
22 to evaluate the claims being settled. The following is a summary of the relevant documents
23 received, reviewed and analyzed by Plaintiffs in order to evaluate the claims:

- 24 a. Significant sample data showing the employees, their employment dates, their
25 time sheets, hourly rates, and their wages.
- 26 b. Significant sample data concerning recorded meal periods.
- 27 c. Defendant's Employee Handbook for the relevant time period, which outlined
28 the wage and hour policies of Defendant.

- d. Employee file of Plaintiff.
- e. Samples of wage statements provided by Defendant to employees.
- f. Significant sample of payroll data.
- g. Significant sample of time records.
- h. Hiring and termination forms used by Defendant for employees, including forms used to authorize background checks.

50. **Division of Fees between Class Counsel** - In accordance with California Rules of Court, rule 3.769, I make the following disclosure. The attorneys' fees awarded shall be allocated as follows: 50% to Zakay Law Group, APC and 50% to the JCL Law Firm, APC. Plaintiff confirmed his approval of the fee splitting in writing in the settlement agreement at ¶ I(E) and counsel for Plaintiff explained this fee split to Plaintiff at the time of the execution.

51. **Timing of Release** – The release of the class claims and the PAGA claims will only be effective upon final approval of the settlement *and* funding in full of the Gross Settlement Amount by Defendant. (See *Generally Settlement Agreement* at ¶ III(B)-(D)).

52. **Release of PAGA Claims and Calculation of PAGA Penalties** – The release of the PAGA claims releases only the claims alleged in the operative complaint and Plaintiff's notice letter to the LWDA. However, non-participating class members who opt out of the settlement will remain bound by the PAGA release, and will release their claims for PAGA penalties. (See *Generally Settlement Agreement* at ¶ I(AA) and III(L)(7)). PAGA penalties will be separately calculated and separately allocated to the Aggrieved Employees. (See *Settlement Agreement* at ¶ III(M)(1)(b)).

53. **Confidential Nature of Data Provided to the Administrator** – While the data produced by Defendant to ILYM Group will be confidential, Class Counsel does not believe that the confidentiality provisions would impede the performance of their fiduciary duties because Class Counsel receives the necessary information, but with the names and addresses redacted in advance of the mailing to show the settlement calculations, weekly reports concerning class member correspondence, and a final report from Settlement Administrator, which is all that is usually

1 needed. Class Counsel will seek authorization from Defendant and/or relief from the Court should
2 an unanticipated or specific issue arise.

3 54. **Compliance with Labor Code §§2689.** Plaintiff complied with all of the
4 procedural requirements of Labor Code §§2689 as follows:

5 a. On August 20, 2020, Plaintiff gave written notice to the LWDA of his intent
6 to assert a claim under PAGA and her alleged basis for the claim. (See Exhibit 3). At the
7 time the notice to the LWDA was filed, Plaintiff also submitted the \$75 filing fee to the
8 LWDA.

9 b. On January 15, 2021, a copy of the filed-stamped complaint was submitted
10 to the LWDA. (See Exhibit 4).

11 c. On October 18, 2021, the LWDA has been provided notice of this motion
12 and the PAGA settlement. (See Exhibit 5).

13
14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct. Executed this 18th day of October, 2021, at San Diego, California.

16
17 By: 
18 Shani O. Zakay
19
20
21
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23
24
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28

EXHIBIT 1

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
2 **JCL LAW FIRM, APC**
3 3990 OLD TOWN AVENUE, SUITE C204
4 SAN DIEGO, CA 92110
5 TEL: 619-599-8292
6 FAX: 619-599-8291

7 **ZAKAY LAW GROUP, APLC**
8 SHANI O. ZAKAY (STATE BAR #277924)
9 3990 OLD TOWN AVENUE, SUITE C204
10 SAN DIEGO, CA 92110
11 TEL: (619) 255-9047
12 FAX: (858) 404-9203

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DANIEL JACOBS; an individual, on behalf
of himself and on behalf of all persons
similarly situated,

PLAINTIFF,

vs.

RUSH MEDIA COMPANY LLC, a
Wisconsin limited liability company; XLT
MANAGEMENT SERVICES, INC., an
Illinois corporation; and DOES 1 through 50,
Inclusive;

DEFENDANTS.

Case No. 20STCV32350

[Action Filed 08/25/2020]

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

Judge: Honorable Daniel J. Buckley.
Dept.: 1

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and
2 between Plaintiff DANIEL JACOBS (hereinafter “Plaintiff”), individually and on behalf of the
3 Settlement Class, and in their representative capacity on behalf of the State of California and the
4 Aggrieved Employees, and Defendants RUSH MEDIA COMPANY, LLC, a Wisconsin limited
5 liability company (“Defendant Rush”) and XLT MANAGEMENT SERVICES, INC., an Illinois
6 corporation (“Defendant XLT”) (hereinafter collectively “Defendants”) (all parties collectively
7 referred to herein as the “Parties”). This Agreement is subject to Court Approval and the terms and
8 conditions prescribed below. The Parties expressly acknowledge that this Agreement is entered into
9 solely for the purpose of compromising significantly-disputed claims and that nothing in this
10 Agreement is or shall constitute an admission of liability or wrongdoing by the Defendants. If for
11 any reason this Agreement is not approved, it will be of no force or effect, and the Parties will be
12 returned to their respective positions immediately prior to and as if they had never executed this
13 Agreement.

14 **I. DEFINITIONS**

- 15 A. “Action” shall mean the putative class action lawsuit designated *Jacobs v. Rush*
16 *Media Company*, Los Angeles Superior Court, Case No. 20STCV32350 (hereinafter
17 the “Action”).
- 18
- 19 B. “Aggrieved Employees” shall mean all of the current and former non-exempt
20 employees and independent contractors that worked for Defendant Rush, including
21 those that received payroll services from XLT Management Services, Inc., in
22 California during the PAGA Period.
- 23
- 24 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
25 Class Action and Release of Claims.
- 26
- 27
- 28

1 D. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and
2 Shani Zakay of Zakay Law Group, APLC.

3
4 E. "Class Counsel Award" means the award of fees, costs, and expenses that the Court
5 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
6 and the Class in the Action, consisting of attorneys' fees currently not to exceed one-
7 third of the Total Settlement Amount currently estimated to be \$110,000 out of
8 \$330,00.00 plus costs and expenses up to \$15,000 and supported by declaration as
9 to the reasonableness of attorney's fees and costs. Class Counsel's award for
10 attorneys' fees will be allocated between Class Counsel as follows: Fifty percent
11 (50%) to the JCL Law Firm, APC; fifty percent (50%) to the Zakay Law Group,
12 APLC.
13

14
15 F. "Class Data" means information regarding Class Members that Defendants will in
16 good faith compile from its records and provide to the Settlement Administrator. It shall be
17 formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's full
18 name; last known address; Social Security Number; and information sufficient to enable the
19 Settlement Administrator to calculate each Class Member's total number of Work shifts.
20

21 G. "Class Members" or the "Class" means all of the current and former non-exempt
22 employees and independent contractors that worked for Defendant Rush, including
23 those that received payroll services from XLT Management Services, Inc., in
24 California during the Class Period.
25

26 H. "Class Period" means the period from August 20, 2016 to July 4, 2021.
27
28

1 I. "Class Representative Service Award" means the amount that the Court authorizes to
2 be paid to the Class Representative, in addition to their Individual Settlement
3 Payments and his pro-rata share of the PAGA Settlement, in recognition of his efforts
4 and risks in assisting with the prosecution of the Action and in exchange for executing
5 a General Release of Defendants and waiver of Civil Code 1542 from the named
6 Plaintiff.

7
8 J. "Class Representative" shall mean plaintiff DANIEL JACOBS.

9
10 K. "Court" means the Superior Court for the State of California, County of Los Angeles
11 presiding over the Action.

12
13 L. "Defendants" shall mean RUSH MEDIA COMPANY, LLC and XLT
14 MANAGEMENT SERVICES, INC. (collectively "Defendants").

15
16 M. "Effective Date" means the earliest date, following entry by the Court of an order
17 and judgment finally approving this Settlement, upon which one of the following have
18 occurred: (i) if no objection is filed to the settlement and no objector appears at the
19 hearing on final approval, thirty (30) calendar days following the Court's entry of the
20 order granting final approval, (ii) if an objection is filed to the settlement and/or an
21 objector appears at the hearing on final approval, then the earlier of the following: (a)
22 the expiration of all potential appeal periods without a filing of a notice of appeal of
23 the final approval order or judgment; (b) final affirmance of the final approval order
24 and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal
25 or denial of all such appeals (including any petition for review, rehearing, certiorari,
26
27
28

1 etc.) such that the final approval order and judgment is no longer subject to further
2 judicial review.

3
4 N. “Funding Date” shall mean thirty (30) calendar days after the Effective Date and is
5 the date Defendants and/or the Released Parties transfer the Total Settlement Amount
6 into the QSF in accord with the terms of this Agreement.

7
8 O. “Individual Settlement Payment” means the amount payable from the Net Settlement
9 Amount to each Settlement Class Member who does not request exclusion from the
10 Settlement and excludes any amounts distributed to Aggrieved Employees pursuant
11 to PAGA.

12
13 P. “Net Settlement Amount” or “NSA” means the Total Settlement Amount, less Class
14 Counsel Award, Class Representative Service Award, PAGA Settlement, and
15 Settlement Administration Costs.

16
17 Q. “Notice Packet” means the Class Notice to be provided to the Class Members by the
18 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
19 than formatting changes to facilitate printing by the Settlement Administrator).

20 R. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
21 Labor Code § 2698 *et seq.*

22
23 S. “PAGA Payment Ratio” means the respective Work Shifts during the PAGA Period
24 for each Aggrieved Employee divided by the sum total of the Work Shifts for all
25 Aggrieved Employees during the PAGA Period.

- 1 T. "PAGA Period" means the period of August 20, 2019, through and including July 4,
2 2021.
3
- 4 U. "PAGA Settlement" shall mean Twenty Thousand Dollars (\$20,000.00) to be
5 allocated from the Total Settlement Amount.
6
- 7 V. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
8 Plaintiff or Defendants, individually.
9
- 10 W. "Payment Ratio" means the respective Work Shifts for each Class Member divided
11 by the total Work Shifts for all Class Members.
12
- 13 X. "Plaintiff" shall mean DANIEL JACOBS.
14
- 15 Y. "QSF" means the Qualified Settlement Fund established, designated and maintained
16 by the Settlement Administrator to fund the Total Settlement Amount.
17
- 18 Z. "Released Class Claims" means any and all class action claims, actions, demands,
19 causes of action, suits, debts, obligations, damages, penalties but excluding PAGA
20 penalties which are being separately released herein, rights or liabilities, of any nature
21 and description whatsoever that are asserted in the Action or based on the facts and
22 theories pleaded in the operative complaint on file at the time of final approval,
23 including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210,
24 218.5, 218.6, 226, 226.3, 226.7, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198,
25 1199, 2802, and 2804 and the applicable IWC Wage Orders which occurred during
26 the Class Period, and expressly excluding all other claims, including claims for
27 vested, benefits, wrongful termination, unemployment, insurance, disability, social
28

1 security, workers' compensation, and class claims outside of the Class Period (Class
2 Release")

3
4 AA. "Released PAGA Claims" means any and all claims for penalties under PAGA,
5 arising during the PAGA Period, which were alleged in the operative complaint at the
6 time of final approval by Plaintiff in the Action and Plaintiff's notice letters to the
7 LWDA, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204,
8 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
9 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders, and any resulting
10 claim for attorneys' fees and costs under PAGA, which occurred during the PAGA
11 Period (the "PAGA Release").
12

13
14 BB. "Released Parties" shall mean Defendants and their past, present and/or future, direct
15 and/or indirect officers, including but not limited to Tim Eichorst, directors, owners,
16 members managers, employees, agents, representatives, attorneys, insurers, partners,
17 investors, shareholders, administrators, parent companies, contractors, customers,
18 subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint
19 venturers
20

21 CC. "Response Deadline" means the date forty-five (45) days after the Settlement
22 Administrator mails Notice Packets to Class Members and the last date on which
23 Class Members may submit requests for exclusion or objections to the Settlement.
24

25 DD. "Settlement" means the disposition of the Action pursuant to this Agreement.

26
27 EE. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
28 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement

1 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
2 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
3 of the Total Settlement Amount is deposited for the purpose of resolving the claims
4 of Settlement Class Members. The Settlement Administrator shall maintain the funds
5 until distribution in an account(s) segregated from the assets of Defendants and any
6 person related to Defendants. *All accrued interest shall be paid and distributed to*
7 *the Settlement Class Members as part of their respective Individual Settlement*
8 *Payment.*
9

10
11 FF. "Settlement Class Members" or "Settlement Class" means all Class Members who
12 have not submitted a timely and valid request for exclusion as provided in this
13 Agreement.

14
15 GG. "Total Settlement Amount" means Three Hundred Thirty Thousand Dollars
16 (\$330,000.00) that Defendants and/or the Released Parties must pay into the QSF in
17 connection with this Settlement, inclusive of the sum of the Individual Settlement
18 Payments, the Class Representative Service Awards, the Class Counsel Award,
19 PAGA Settlement and the Settlement Administration Costs and *exclusive* of the
20 employer's share of payroll tax, if any, triggered by any payment under this
21 Settlement.
22

23 HH. "Work Shift", for purposes of calculating the distribution of the Net Settlement
24 Amount, means the number of shifts where a Class Member performed work as non-
25 exempt employees and independent contractors for Defendant Rush and may have
26 also received payroll services from Defendant XLT Management Services, Inc. in
27 California during the Class Period, calculated by using the timekeeping and payroll
28

1 data for each Class Member during the Class Period to identify the number of shifts
2 in which said Class Member presented for work and/or performed at least one hour
3 of work. For purpose of determining the Individual Settlement Payments and the
4 Settlement Allocation, each Class Member who is a former employee no longer
5 working for Defendants will be assigned two (2) additional Work Shifts.
6

7 II. "PAGA Work Shifts", for purposes of calculating the distribution of the Aggrieved
8 Employee Payment, as defined herein, means the number of shifts where an
9 Aggrieved Employee performed work as non-exempt employees and independent
10 contractors for Defendant Rush and may have also received payroll services from
11 Defendant XLT Management Services, Inc. in California during the PAGA Period,
12 calculated by using the timekeeping and payroll data for each Class Member during
13 the Class Period to identify the number of shifts in which said Class Member
14 presented for work and/or performed at least one hour of work.
15
16

17 **II. RECITALS**

18 A. The Parties stipulate to provisional class certification for purposes of settlement only.
19 If the Court does not grant final approval of this Settlement, this provisional class certification
20 shall immediately be set aside, any order conditionally certifying the Class shall be vacated,
21 and this Agreement shall not be used as evidence that class certification is appropriate. If the
22 Court does not grant either preliminary or final approval of this Settlement, the Parties shall
23 be returned to their respective statuses as of the date and time immediately prior to the
24 execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement
25 had not been executed, except that any costs actually incurred by the Settlement
26 Administrator shall be paid in equal apportionment among the Parties.
27
28

1 B. On August 20, 2020, Plaintiff filed a Notice of Violations with the Labor and
2 Workforce Development Agency (LWDA) and served the same on Defendant.

3
4 C. On August 25, 2020, Plaintiff filed the Lawsuit for:

5 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;

6
7 2. Failure to pay minimum wages in violation of California Labor Code sections
8 1194, 1197 and 1197.1;

9
10 3. Failure to pay overtime wages in violation of California Labor Code sections
11 510 *et seq*;

12
13 4. Failure to provide required meal periods in violation of California Labor Code
14 sections 226.7 and 512 and the applicable IWC wage order;

15
16 5. Failure to provide required rest periods in violation of California Labor Code
17 sections 226.7 and 512 and the applicable IWC wage order;

18
19 6. Failure to provide accurate itemized wage statements in violation of California
20 Labor Code section 226;

21
22 7. Failure to reimburse Plaintiff for required expenses in violation of California
23 Labor Code section 2802;

24
25 8. Failure to provide wages when due in violation of California Labor Code
26 sections 201, 202 and 203.

27 D. On November 2, 2020, Plaintiff filed the First Amended Complaint ("FAC") against
28 Defendants adding a ninth cause of action for violations of PAGA.

1 E. The Class Representative believes he has meritorious claims based on alleged
2 violations of the California Labor Code, and the Industrial Wage Commission
3 Orders, and that class certification is appropriate because the prerequisites for class
4 certification can be satisfied in the Action, and this action is manageable as a PAGA
5 representative action.
6

7 F. Defendants deny any liability or wrongdoing of any kind associated with the claims
8 alleged in the Action, dispute any wages, damages and penalties claimed by the Class
9 Representative are owed, and further contend that, for any purpose other than settlement,
10 the Action is not appropriate for class or representative action treatment. Defendants
11 contend, among other things, that at all times they complied with the California Labor
12 Code, the Industrial Wage Commission Orders, the California Business & Professions
13 Code, and the Common Law.
14

15 G. The Class Representative is represented by Class Counsel. Class Counsel
16 investigated the facts relevant to the Action, including conducting an independent
17 investigation as to the allegations, reviewing documents and information exchanged
18 through informal discovery, and reviewing documents and information provided by
19 Defendants pursuant to informal requests for information to prepare for mediation.
20 Defendants produced for the purpose of settlement negotiations certain employment
21 data concerning the Settlement Class, which Class Counsel reviewed and analyzed.
22 Based on their own independent investigation and evaluation, Class Counsel are of
23 the opinion that the Settlement with Defendants is fair, reasonable and adequate, and
24 is in the best interest of the Settlement Class in light of all known facts and
25 circumstances, including the risks of significant delay, defenses asserted by
26
27
28

1 Defendants, uncertainties regarding class certification, and numerous potential
2 appellate issues. Although they deny any liability, Defendants are agreeing to this
3 Settlement solely to avoid the inconveniences and cost of further litigation. The
4 Parties and their counsel have agreed to settle the claims on the terms set forth in
5 this Agreement.
6

7 H. On May 4, 2021, the Parties participated in mediation presided over by Hon. William
8 C. Pate (Ret.) a respected jurist and mediator of wage and hour class actions. The
9 mediation concluded with a settlement after both sides agreed to a Mediator's
10 proposal which was subsequently memorialized in the form of a Memorandum of
11 Understanding.
12

13 I. This Agreement replaces and supersedes the Memorandum of Understanding and any
14 other agreements, understandings, or representations between the Parties. This
15 Agreement represents a compromise and settlement of highly disputed claims.
16 Nothing in this Agreement is intended or will be construed as an admission by
17 Defendants that the claims in the Action of Plaintiff or the Class Members have merit
18 or that Defendants bear any liability to Plaintiff or the Class on those claims or any
19 other claims, or as an admission by Plaintiff that Defendants' defenses in the Action
20 have merit.
21

22 J. The Parties believe that the Settlement is fair, reasonable and adequate. The
23 Settlement was arrived at through arm's-length negotiations, taking into account all
24 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
25 attendant to continuing the Action through trial and any appeal. Accordingly, the
26
27
28

Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

K. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendants.

1. Settlement Consideration. In full and complete settlement of the Actions, and in exchange for the releases set forth below, Defendants and the Released Parties will pay the sum of the Individual Settlement Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement, and the Settlement Administration Costs, as specified in this Agreement, equal to the Total Settlement Amount of Three Hundred Thirty Thousand Dollars (\$330,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Total Settlement Amount shall revert to Defendants. Other than the Defendants' share of employer payroll taxes, or as otherwise specified in this Agreement, Defendants shall not be required to pay more than the Total Settlement Amount, except as provided for hereinbelow.

2. Class Size. As of April 28, 2021, Defendants estimated that the Settlement Class was comprised of 397 individuals who collectively worked

1 approximately 4,704 Work Shift (“Projected Work Shifts”) during the Class
2 Period. In regard hereto, Defendants will provide a declaration under penalty
3 of perjury confirming the number of applicable Class Members and Work
4 Shifts they worked during the applicable Class Period. The Settlement
5 Amount will increase proportionally if added class members are more than
6 10% of the estimate above, or if the Projected Work Shifts are more than 15%
7 of the estimate set forth herein.
8

9
10 3. Settlement Payment. Defendants and the Released Parties, and each of them,
11 are jointly and severally liable for payment of the Total Settlement Amount.
12 Defendants shall pay, via wire transfer, the Total Settlement Amount to the
13 Settlement Administrator on the Funding Date.

14
15 4. Defendants’ Share of Payroll Taxes. Defendants’ share of employer side
16 payroll taxes is in addition to the Total Settlement Amount and shall be paid
17 together with the Total Settlement Amount.
18

19 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
20 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
21 release the Released Parties from the Released Class Claims for the Class Period.

22 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
23 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
24 California release the Released Parties from the PAGA Released Claims for the PAGA
25 Period.
26

27 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth
28 in this Agreement, Plaintiff, on his own behalf and on behalf of his heirs, spouses,

1 executors, administrators, attorneys, agents, and assigns, fully and finally waives, releases,
2 acquits and forever discharges the Released Parties from any and all claims, whether known
3 or unknown, which exist or may exist on her behalf as of the date of this Agreement,
4 including but not limited to any and all tort claims, contract claims, wage claims, wrongful
5 termination claims, disability claims, benefit claims, public policy claims, retaliation
6 claims, statutory claims, personal injury claims, emotional distress claims, invasion of
7 privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all
8 claims arising under any federal, state or other governmental statute, law, regulation or
9 ordinance, including, but not limited to claims for violation of the Fair Labor Standards
10 Act, the California Labor Code, the Wage Orders of California's Industrial Welfare
11 Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age
12 Discrimination in Employment Act (ADEA), the Employee Retirement Income Security
13 Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing
14 Act, the California Family Rights Act, the Family Medical Leave Act, California's
15 Whistleblower Protection Act, California Business & Professions Code Section 17200 et
16 seq., and any and all claims arising under any federal, state or other governmental statute,
17 law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims,
18 rights or benefits that he may have under California Civil Code § 1542, which provides as
19 follows:
20
21
22

23 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
24 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
25 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
26 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
27
28

***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.***

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understand this Settlement Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enter into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now know or believe to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

1 E. Conditions Precedent: This Settlement will become final and effective only upon the
2 occurrence of all of the following events:

- 3
- 4 1. The Court enters an order granting preliminary approval of the Settlement;
- 5
- 6 2. The Court enters an order granting final approval of the Settlement and a Final
7 Judgment;
- 8
- 9 3. If an objector appears at the final approval hearing, the time for appeal of the
10 Final Judgment and Order Granting Final Approval of Class Action
11 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
12 any appeal from the Judgment and Order Granting Final Approval of Class
13 Action Settlement; and
- 14
- 15 4. Defendants fully fund the Total Settlement Amount.

16 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
17 not preliminarily or finally approved by the Court, fails to become effective, or is
18 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
19 Defendants from obtaining a complete resolution of the Released Claims, or if
20 Defendants fails to fully fund the Total Settlement Amount:

- 21
- 22 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
23 and shall not be admissible in any judicial, administrative or arbitral
24 proceeding for any purpose or with respect to any issue, substantive or
25 procedural;
26

1 2. The conditional class certification (obtained for any purpose) shall be void *ab*
2 *initio* and of no force or effect, and shall not be admissible in any judicial,
3 administrative or arbitral proceeding for any purpose or with respect to any
4 issue, substantive or procedural; and

5
6 3. None of the Parties to this Settlement will be deemed to have waived any
7 claims, objections, defenses or arguments in the Action, including with respect
8 to the issue of class certification.

9
10 4. Defendants shall bear the sole responsibility for any cost to issue or reissue
11 any curative notice to the Settlement Class Members and all Settlement
12 Administration Costs incurred to the date of nullification.

13
14 G. Certification of the Settlement Class. The Parties stipulate to conditional class
15 certification of the Class for the Class Period for purposes of settlement only. In the
16 event that this Settlement is not approved by the Court, fails to become effective, or is
17 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
18 Defendants from obtaining a complete resolution of the Released Claims, the
19 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
20 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
21 proceeding for any purpose or with respect to any issue, substantive or procedural.

22
23
24 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
25 effect of the payments called for, and Class Members and/or Aggrieved Employees are
26 not relying on any statement or representation by the Parties in this regard. Class
27 Members and/or Aggrieved Employees understand and agree that they will be
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1 responsible for the payment of any taxes and penalties assessed on the Individual
2 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
3 Settlement described and will be solely responsible for any penalties or other
4 obligations resulting from their personal tax reporting of Individual Settlement
5 Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.
6

- 7 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
8 the "acknowledging party" and each Party to this Agreement other than the
9 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
10 of this Agreement, and no written communication or disclosure between or among the
11 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
12 such communication or disclosure constitute or be construed or be relied upon as, tax
13 advice within the meaning of United States Treasury Department circular 230 (31 CFR
14 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
15 her or its own, independent legal and tax counsel for advice (including tax advice) in
16 connection with this Agreement, (b) has not entered into this Agreement based upon
17 the recommendation of any other Party or any attorney or advisor to any other Party,
18 and (c) is not entitled to rely upon any communication or disclosure by any attorney
19 or adviser to any other party to avoid any tax penalty that may be imposed on the
20 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
21 any limitation that protects the confidentiality of any such attorney's or adviser's tax
22 strategies (regardless of whether such limitation is legally binding) upon disclosure by
23 the acknowledging party of the tax treatment or tax structure of any transaction,
24 including any transaction contemplated by this Agreement.
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1 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
2 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
3 which shall include this Settlement Agreement. Plaintiff will provide Defendants with
4 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
5 Defendants an opportunity to propose changes or additions to the Motion.
6

7 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
8 establishing and administering the QSF; calculating, processing and mailing payments
9 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
10 mailing the Notice Packets to the Class Members as directed by the Court; receiving
11 and reporting the objections and requests for exclusion; calculating, deducting and
12 remitting all legally required taxes from Individual Settlement Payments and
13 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
14 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
15 Settlement; processing and mailing tax payments to the appropriate state and federal
16 taxing authorities; providing declaration(s) as necessary in support of preliminary
17 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
18 or the Court orders the Settlement Administrator to perform. The Settlement
19 Administrator shall keep the Parties timely apprised of the performance of all
20 Settlement Administrator responsibilities by among other things, sending a weekly
21 status report to the Parties' counsel stating the date of the mailing, the of number of
22 Elections Not to Participate in Settlement it receives (including the numbers of valid
23 and deficient), and number of objections received.
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27 L. Notice Procedure.
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1 1. Class Data. No later than ten (10) business days after the Preliminary
2 Approval Date, Defendants shall provide the Settlement Administrator with
3 the Class Data for purposes of preparing and mailing Notice Packets to the
4 Class Members.

5
6 2. Notice Packets.

7
8 a) The Notice Packet shall contain the Notice of Class Action Settlement
9 in a form substantially similar to the form attached as Exhibit A. The
10 Notice of Class Action Settlement shall inform Class Members and
11 Aggrieved Employees that they need not do anything in order to
12 receive an Individual Settlement Payment and/or Aggrieved
13 Employees' individual shares of the PAGA Settlement and to keep the
14 Settlement Administrator apprised of their current mailing address, to
15 which the Individual Settlement Payments and/or Aggrieved
16 Employees' individual shares of the PAGA Settlement will be mailed
17 following the Funding Date. The Notice of Class Action Settlement
18 shall set forth the release to be given by all members of the Class who
19 do not request to be excluded from the Settlement Class and/or
20 Aggrieved Employees' in exchange for an Individual Settlement
21 Payment and/or Aggrieved Employees' individual shares of the PAGA
22 Settlement, the number of Work Shifts worked by each Class Member
23 during the Class Period and PAGA Period, if any, and the estimated
24 amount of their Individual Settlement Payment if they do not request
25 to be excluded from the Settlement and each Aggrieved Employee's
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1 share of the PAGA Settlement, if any. The Settlement Administrator
2 shall use the Class Data to determine Class Members' Work Shifts and
3 PAGA Work Shifts. The Notice will also advise the Aggrieved
4 Employees that they will release the Released PAGA Claims and will
5 receive their share of the PAGA Settlement regardless of whether they
6 request to be excluded from the Settlement.
7

8 b) The Notice Packet's mailing envelope shall include the following
9 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
10 ENTITLED TO PARTICIPATE IN A CLASS ACTION
11 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
12 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
13 NOTICE."
14

15
16 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
17 Settlement Administrator will perform a search based on the National Change
18 of Address Database to update and correct any known or identifiable address
19 changes. No later than fourteen (14) calendar days after receiving the Class
20 Data from Defendant, the Settlement Administrator shall mail copies of the
21 Notice Packet to all Class Members via regular First-Class U.S. Mail . The
22 Settlement Administrator shall exercise its best judgment to determine the
23 current mailing address for each Class Member. The address identified by the
24 Settlement Administrator as the current mailing address shall be presumed to
25 be the best mailing address for each Class Member.
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1 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be
3 re-mailed to any forwarding address provided. If no forwarding address is
4 provided, the Settlement Administrator shall promptly attempt to determine a
5 correct address by lawful use of skip-tracing, or other search using the name,
6 address and/or Social Security number of the Class Member involved, and
7 shall then perform a re-mailing, if another mailing address is identified by the
8 Settlement Administrator. In addition, if any Notice Packets, which are
9 addressed to Class Members who are currently employed by Defendant Rush
10 and/or receiving payroll services from Defendant XLT Management Services,
11 Inc. are returned to the Settlement Administrator as non-delivered and no
12 forwarding address is provided, the Settlement Administrator shall notify
13 Defendants. Defendants will then request that the current Class Member
14 provide a corrected address and transmit to the Administrator any corrected
15 address provided by the Class Member. Class Members who received a re-
16 mailed Notice Packet shall have their Response Deadline extended fifteen (15)
17 days from the original Response Deadline.

21 5. Disputes Regarding Individual Settlement Payments. Class Members will
22 have the opportunity, should they disagree with Defendants' records regarding
23 the number of Work Shifts to which they have been credited to provide
24 documentation and/or an explanation to show contrary numbers. If there is a
25 dispute, the Settlement Administrator will consult with the Parties to
26 determine whether an adjustment is warranted. The Settlement Administrator
27 shall determine the eligibility for, and the amounts of, any Individual
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1 Settlement Payments under the terms of this Agreement. The Settlement
2 Administrator's determination of the eligibility for and amount of any
3 Individual Settlement Payment shall be binding upon the Class Member and
4 the Parties.
5

6 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
7 by the Settlement Administrator concerning the administration of the
8 Settlement will be resolved by the Court under the laws of the State of
9 California. Before any such involvement of the Court, counsel for the Parties
10 will confer in good faith to resolve the disputes without the necessity of
11 involving the Court.
12

13 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
14 Packet shall state that Class Members who wish to exclude themselves from
15 the Settlement must submit a written request for exclusion by the Response
16 Deadline. The written request for exclusion must state that the Class Member
17 wishes to exclude himself or herself from the Settlement and (1) must contain
18 the name, address, and the last four digits of the Social Security number of the
19 person requesting exclusion; (2) must be signed by the Class Member; (3)
20 must be postmarked or fax stamped by the Response Deadline and returned to
21 the Settlement Administrator at the specified address or fax telephone number;
22 and (4) contain a typewritten or handwritten notice stating in substance: "I
23 have read the Notice and wish to opt out and be excluded from the settlement
24 of the class action lawsuit entitled *Jacobs v. Rush Media Company*, currently
25 pending in the Los Angeles Superior Court, Case No. 20STCV32350. I
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1 understand that by requesting to be excluded from the settlement, I will
2 receive no money from the Settlement described in the Notice.” The request
3 for exclusion will not be valid if it is not timely submitted, if it is not signed
4 by the Class Member, or if it does not contain the name and address and last
5 four digits of the Social Security number of the Class Member. The date of
6 the postmark on the mailing envelope or fax stamp on the request for exclusion
7 shall be the exclusive means used to determine whether the request for
8 exclusion was timely submitted. Any Class Member who requests to be
9 excluded from the Settlement Class will not be entitled to an Individual
10 Settlement Payment and will not be otherwise bound by the terms of the
11 Settlement or have any right to object, appeal or comment thereon. However,
12 any Class Member that submits a timely request for exclusion that is also a
13 member of the Aggrieved Employees will still receive their pro rata share of
14 the PAGA Settlement, as specified below, and in consideration, will be bound
15 by the Release by the Aggrieved Employees as set forth herein. Settlement
16 Class Members who fail to submit a valid and timely written request for
17 exclusion on or before the Response Deadline shall be bound by all terms of
18 the Settlement and any final judgment entered in this Action if the Settlement
19 is approved by the Court. No later than fourteen (14) calendar days after the
20 Response Deadline, the Settlement Administrator shall provide counsel for
21 the Parties with a final list of the Class Members who have timely submitted
22 written requests for exclusion. At no time shall any of the Parties or their
23 counsel seek to solicit or otherwise encourage members of the Class to submit
24 requests for exclusion from the Settlement.
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1 8. Objections. The Notice of Class Action Settlement contained in the Notice
2 Packet shall state that Class Members who wish to object to the Settlement
3 may submit to the Settlement Administrator a written statement of objection
4 (“Notice of Objection”) shall have forty-five (45) days from the date the notice
5 is first mailed in which to object to the terms of the Settlement. The postmark
6 date of mailing shall be deemed the exclusive means for determining that a
7 Notice of Objection was served timely. The Notice of Objection must be
8 signed by the Settlement Class Member and state: (1) the case name and
9 number; (2) the name of the Settlement Class Member; (3) the address of the
10 Settlement Class Member; (4) the last four digits of the Settlement Class
11 Member’s Social Security number; (4) the basis for the objection; and (5) if
12 the Settlement Class Member intends to appear at the Final
13 Approval/Settlement Fairness Hearing. Class Members who fail to make
14 objections in writing in the manner specified above may still make their
15 objections orally at the Final Approval/Settlement Fairness Hearing with the
16 Court’s permission. Settlement Class Members will have a right to appear at
17 the Final Approval/Settlement Fairness Hearing to have their objections heard
18 by the Court. At no time shall any of the Parties or their counsel seek to solicit
19 or otherwise encourage Class Members to file or serve written objections to
20 the Settlement or appeal from the Order and Final Judgment. Class Members
21 who submit a written request for exclusion may not object to the Settlement.
22 Class Members may not object to the PAGA Settlement.
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1 M. Funding and Allocation of the Total Settlement Amount. Defendants are required to
2 pay the Total Settlement Amount on or before the Funding Date, plus any employer's
3 share of payroll taxes as mandated by law within the time specified herein.
4

5 1. Individual Settlement Payments. Individual Settlement Payments shall be
6 paid from the Net Settlement Amount and shall be paid pursuant to the
7 formula set forth herein. Using the Class Data, the Settlement Administrator
8 shall add up the total number of Work Shifts for all Class Members. The
9 respective Work Shifts for each Class Member will be divided by the total
10 Work Shifts for all Class Members, resulting in the Payment Ratio for each
11 Class Member. Each Class Member's Payment Ratio will then be multiplied
12 by the Net Settlement Amount to calculate each Class Member's estimated
13 Individual Settlement Payments. Each Individual Settlement Payment will be
14 reduced by any legally mandated employee tax withholdings (e.g., employee
15 payroll taxes, etc.). Individual Settlement Payments for Class Members who
16 submit valid and timely requests for exclusion will be redistributed to
17 Settlement Class Members who do not submit valid and timely requests for
18 exclusion on a pro rata basis based on their respective Payment Ratios.
19

20
21 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
22 Class Data, the Settlement Administrator shall add up the total number of
23 PAGA Work Shifts for all Aggrieved Employees during the PAGA Period.
24 The respective PAGA Work Shifts for each Aggrieved Employee will be
25 divided by the total PAGA Work Shifts for all Aggrieved Employees,
26 resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
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1 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
2 Aggrieved Employee Payment to calculate each Aggrieved Employee's
3 estimated share of the PAGA Settlement.
4

5 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
6 Settlement Payments shall be allocated and treated as follows: 20% as wages
7 ("Wage Portion"); 80% as penalties and interest ("Non-Wage Portion"). The
8 Wage Portion is subject to wage withholdings and shall be reported on IRS
9 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
10 and shall be reported on IRS Form 1099.
11

12 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
13 Employee Settlement Payments shall be allocated and treated as 100%
14 penalties and shall be reported on IRS Form 1099.
15

16 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
17 individual shares of the PAGA Settlement made to Settlement Class Members
18 and/or Aggrieved Employees under this Settlement Agreement, as well as any
19 other payments made pursuant to this Settlement Agreement, will not be
20 utilized to calculate any additional benefits under any benefit plans to which
21 any Class Members may be eligible, including, but not limited to profit-
22 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
23 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
24 Parties' intention that this Settlement Agreement will not affect any rights,
25 contributions, or amounts to which any Class Members may be entitled under
26 any benefit plans.
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1 6. All monies received by Settlement Class Members under the Settlement which
2 are attributable to wages shall constitute income to such Settlement Class
3 Members solely in the year in which such monies actually are received by the
4 Settlement Class Members. It is the intent of the Parties that Individual
5 Settlement Payments and individual shares of the PAGA Settlement provided
6 for in this Settlement agreement are the sole payments to be made by Defendants
7 to Settlement Class Members and/or Aggrieved Employees in connection with
8 this Settlement Agreement, with the exception of Plaintiff, and that the
9 Settlement Class Members and/or Aggrieved Employees are not entitled to any
10 new or additional compensation or benefits as a result of having received the
11 Individual Settlement Payments and/or their shares of the PAGA Settlement.
12

13
14 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
15 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
16 and/or Aggrieved Employees last known mailing address no later than fifteen
17 (15) calendar days after the Funding Date.
18

19 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
20 Employees shall remain valid and negotiable for one hundred and eighty (180) days
21 from the date of their issuance. If a Settlement Class Member and/or Aggrieved
22 Employee does not cash his or her settlement check within 90 days, the Settlement
23 Administrator will send a letter to such persons, advising that the check will expire
24 after the 180th day, and invite that Settlement Class Member and/or Aggrieved
25 Employee to request reissuance in the event the check was destroyed, lost or
26 misplaced. In the event an Individual Settlement Payment and/or Aggrieved
27 Employee does not cash his or her settlement check within 90 days, the Settlement
28 Administrator will send a letter to such persons, advising that the check will expire

1 Employee's individual share of the PAGA Settlement check has not been cashed
2 within one hundred and eighty (180) days, the Settlement Administrator shall transfer
3 the amount represented by the checks to the State of California Controller pursuant to
4 the Unclaimed Property Law, Code of Civil procedure Section 1500, et seq. with the
5 identity of the Settlement Class Member and/or Aggrieved Employee to whom the
6 funds belong, to be held for the Participating Class Member pursuant to the California
7 Unclaimed Property Law. In that event, the Settlement Class Member and/or
8 Aggrieved Employee shall remain bound by the terms of the Agreement and the Final
9 Approval Order and Judgment. The money transferred to the State of California
10 Controller shall remain the property of the Settlement Class Member and/or
11 Aggrieved Employee. This shall allow Participating Class Members who did not cash
12 their checks to collect their Individual Settlement Payments at any time in the future.
13 Therefore, there shall be no unpaid residue or unclaimed or abandoned Class Member
14 fund created by this Settlement and California Code of Civil Procedure Section 384
15 shall not apply. The Parties hereby expressly agree to this specific distribution for any
16 and all unclaimed funds.
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20 9. Class Representative Service Award. In addition to the Individual Settlement
21 Payment and the individual share of the PAGA Settlement to be paid to
22 Plaintiff, Plaintiff will apply to the Court for an award of not more than
23 \$10,000, as the Class Representative Service Award. Defendants does not
24 presently intend to oppose a Class Representative Service Award of not more
25 than \$10,000 for Plaintiff. In the event the Court reduces or does not approve
26 of the requested Service Award payments, Plaintiff shall not have the right to
27 revoke the settlement and it will remain binding. Plaintiff retains the right to
28

1 appeal any denial of a requested Service Award. The Settlement
2 Administrator shall pay the Class Representative Service Award, either in the
3 amount stated herein if approved by the Court or some other amount as
4 approved by the Court, to Plaintiff from the Total Settlement Amount no later
5 than ten (10) calendar days after the Funding Date. Any portion of the
6 requested Class Representative Service Awards that are not awarded to the
7 Class Representatives shall be part of the Net Settlement Amount and shall be
8 distributed to Settlement Class Members as provided in this Agreement. The
9 Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff
10 for his Class Representative Service Award. Plaintiff shall be solely and
11 legally responsible to pay any and all applicable taxes on their Class
12 Representative Service Award and shall hold harmless the Released Parties
13 from any claim or liability for taxes, penalties, or interest arising as a result of
14 the Class Representative Service Awards. The Class Representative Service
15 Award shall be in addition to Plaintiff's Individual Settlement Payment as a
16 Settlement Class Member. Approval of this Settlement shall not be
17 conditioned on Court approval of the requested amount of the Class
18 Representative Service Award. In the event that the Court reduces or does not
19 approve the requested Class Representative Service Award, Plaintiff shall not
20 have the right to revoke the Settlement, and it will remain binding.

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25 10. Class Counsel Award. Defendants understand a motion by Class Counsel for
26 attorneys' fees not to exceed one-third of the Total Settlement Amount
27 currently estimated to be \$110,000.00 plus costs and expenses supported by
28 declaration not to exceed Dollars (\$15,000), from the Total Settlement

1 Amount will be filed. Any portion of the requested Class Counsel Award that
2 is not awarded to Class Counsel shall be part of the Net Settlement Amount
3 and shall be distributed to Settlement Class Members as provided in this
4 Agreement. The Settlement Administrator shall allocate and pay the Class
5 Counsel Award to Class Counsel from the Total Settlement Amount no later
6 than five (5) calendar days after the Funding Date. Class Counsel shall be
7 solely and legally responsible to pay all applicable taxes on the payment made
8 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
9 Form 1099 — MISC to Class Counsel for the payments made pursuant to this
10 paragraph. In the event that the Court reduces or does not approve the
11 requested Class Counsel Award, Plaintiff and Class Counsel shall not have
12 the right to revoke the Settlement, or to appeal such order, and the Settlement
13 will remain binding.
14
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- 16
17 11. PAGA Settlement. Twenty Thousand Dollars (\$20,000) shall be allocated
18 from the Total Settlement Amount for settlement of claims for civil penalties
19 under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
20 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
21 Settlement (\$15,000) to the California Labor and Workforce Development
22 Agency no later than twenty-five (25) calendar days after the Funding Date
23 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement
24 (\$5,000) will be distributed to the Aggrieved Employees as described in this
25 Agreement (hereinafter “Aggrieved Employee Payment”). For purposes of
26 distributing the PAGA Settlement to the Aggrieved Employees, each
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1 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
2 Employee Payment using the PAGA Payment Ratio as defined above.

3
4 12. Settlement Administration Costs. The Settlement Administrator shall be paid
5 for the costs of administration of the Settlement from the Total Settlement
6 Amount. The estimate of the Settlement Administration Costs is \$11,000.00.
7 The Settlement Administrator shall be paid the Settlement Administration
8 Costs no later than twenty-five (25) calendar days after the Funding Date.
9

10 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
11 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
12 twenty-eight (28) days following the expiration of the Response Deadline, which
13 motion shall request final approval of the Settlement and a determination of the
14 amounts payable for the Class Representative Service Award, the Class Counsel
15 Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will
16 provide Defendants with a draft of the Motion at least 3 business days prior to the
17 filing of the Motion to give Defendants an opportunity to propose changes or
18 additions to the Motion
19

20
21 1. Declaration by Settlement Administrator. No later than seven (7) calendar
22 days after the Response Deadline, the Settlement Administrator shall submit
23 a declaration in support of Plaintiff's motion for final approval of this
24 Settlement detailing the number of Notice Packets mailed and re-mailed to
25 Class Members, the number of undeliverable Notice Packets, the number of
26 timely requests for exclusion, the number of objections received, the amount
27 of the average Individual Settlement Payment and highest Individual
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1 Settlement Payment, the Settlement Administration Costs, and any other
2 information as the Parties mutually agree or the Court orders the Settlement
3 Administrator to provide.
4

5 2. Final Approval Order and Judgment. Class Counsel shall present an Order
6 Granting Final Approval of Class Action Settlement to the Court for its
7 approval, and Judgment thereon, at the time Class Counsel files the Motion
8 for Final Approval.
9

10 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
11 an opportunity for Counsel for Defendants to review the Motions for Preliminary and
12 Final Approval, including the Order Granting Final Approval of Class Action
13 Settlement, and Judgment before filing with the Court. The Parties and their counsel
14 will cooperate with each other and use their best efforts to affect the Court's approval
15 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
16 Judgment.
17

18
19 O. Cooperation. The Parties and their counsel will cooperate with each other and use
20 their best efforts to implement the Settlement.

21
22 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
23 except such proceedings necessary to implement and complete the Settlement, pending
24 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

25
26 Q. Amendment or Modification. This Agreement may be amended or modified only by
27 a written instrument signed by counsel for all Parties or their successors-in-interest.
28

1 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
2 Agreement among these Parties, and no oral or written representations, warranties or
3 inducements have been made to any Party concerning this Agreement or its Exhibit
4 other than the representations, warranties and covenants contained and memorialized
5 in this Agreement and its Exhibit.
6

7 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
8 represent they are expressly authorized by the Parties whom they represent to negotiate
9 this Agreement and to take all appropriate Action required or permitted to be taken by
10 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
11 documents required to effectuate the terms of this Agreement. The persons signing
12 this Agreement on behalf of Defendants represent and warrant that they are authorized
13 to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that
14 he is authorized to sign this Agreement and that he has not assigned any claim, or part
15 of a claim, covered by this Settlement to a third-party.
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18 T. No Public Comment: The Parties and their counsel agree that they will not issue any
19 press releases, initiate any contact with the press, respond to any press inquiry, or have
20 any communication with the press about the fact, amount or terms of the Settlement
21 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
22 of its terms for any marketing or promotional purposes. Nothing herein will restrict
23 Class Counsel from including publicly available information regarding this settlement
24 in future judicial submissions regarding Class Counsel's qualifications and experience.
25 Further, Class Counsel will not include, reference or use the Settlement Agreement for
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1 any marketing or promotional purposes, either before or after the Motion for
2 Preliminary Approval is filed.

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4 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
5 to the benefit of, the successors or assigns of the Parties, as previously defined.

6
7 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
8 shall be governed by and interpreted according to the laws of the State of California.

9
10 W. Counterparts. This Agreement may be executed in one or more counterparts. All
11 executed counterparts and each of them shall be deemed to be one and the same
12 instrument provided that counsel for the Parties to this Agreement shall exchange
13 among themselves copies or originals of the signed counterparts.

14
15 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
16 is a fair, adequate and reasonable settlement of this Action and have arrived at this
17 Settlement after extensive arms-length negotiations, taking into account all relevant
18 factors, present and potential.

19
20 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
21 respect to the interpretation, implementation and enforcement of the terms of this
22 Agreement and all orders and judgments entered in connection therewith, and the
23 Parties and their counsel submit to the jurisdiction of the Court for purposes of
24 interpreting, implementing and enforcing the settlement and all orders and judgments
25 entered in connection with this Agreement.
26
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28

1 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
2 the Court shall first attempt to construe the provisions valid to the fullest extent
3 possible consistent with applicable precedents so as to define all provisions of this
4 Agreement valid and enforceable.

5
6 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
7 intend to pursue any claims against the Released Parties, including, but not limited to,
8 any and all claims relating to or arising from Plaintiff's employment with Defendants,
9 regardless of whether Class Counsel is currently aware of any facts or legal theories
10 upon which any claims or causes of action could be brought against Released Parties,
11 including those facts or legal theories alleged in the operative complaint in this Action.
12 The Parties further acknowledge, understand and agree that this representation is
13 essential to the Agreement and that this Agreement would not have been entered into
14 were it not for this representation.

15
16
17 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
18 certification for purposes of this settlement only.

19
20 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
21 Released Claims have merit and give rise to liability on the part of Defendants.
22 Defendants claims that the Released Claims have no merit and do not give rise to
23 liability. This Agreement is a compromise of disputed claims. Nothing contained in
24 this Agreement and no documents referred to and no action taken to carry out this
25 Agreement may be construed or used as an admission by or against the Defendants or
26 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
27
28

1 than as may be specifically set forth herein, each Party shall be responsible for and
2 shall bear its/his own attorney's fees and costs.
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IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 9/9/2021

DocuSigned by:
Daniel Jacobs
4634BE60A9A5451...
DANIEL JACOBS

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: _____

RUSH MEDIA COMPANY, LLC, a Wisconsin
limited liability company

Printed Name

Title

DATED: 8/31/2021 | 1:08 PM PDT

DocuSigned by:
Scott West
7EB05CE52FB2400...
XLT MANAGEMENT SERVICES, INC., an Illinois
corporation

Scott West

Printed Name

President

Title

1 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:
2

3 DATED: _____
4

DANIEL JACOBS
5

6 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:
7

8 DATED: 9/7/21
9


RUSH MEDIA COMPANY, LLC, a Wisconsin
limited liability company

Tim Eichorst
11

Printed Name
12

Managing Member
13

Title
14

15 DATED: _____
16

XLT MANAGEMENT SERVICES, INC., an Illinois
corporation
17

Printed Name
18

Title
19
20
21
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24
25
26
27
28

1 IT IS SO AGREED AS TO FORM BY COUNSEL:

2
3 DATED: 9/9/2021

JCL LAW FIRM, A.P.C.

4 By:

DocuSigned by:

Jean-Claude Lapuyade

0EBC26D5B9CD468...

5 Attorneys for Plaintiffs and the Settlement Class
6 Members

7
8
9 DATED: 9/9/2021

ZAKAY LAW GROUP, APLC

11 By:

DocuSigned by:

Shani B. Zakay

4ECDE73A91D4420...

12 Attorneys for Plaintiffs and the Settlement Class
13 Members

14
15
16 DATED:

RYAN H. CROSNER

PAUL M. SMITH

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

20 By:

21 Attorneys for Defendant RUSH MEDIA COMPANY LLC

22 DATED:

KAREN E. POINTER

KELLY ANN COLEMAN

24 LERMAN & POINTER LLP

25 By:

26 Attorneys for Defendant RUSH MEDIA COMPANY LLC
27
28

1 IT IS SO AGREED AS TO FORM BY COUNSEL:

2
3 DATED: _____

JCL LAW FIRM, A.P.C.

4 By: _____

5 Attorneys for Plaintiffs and the Settlement Class
6 Members

7
8
9
10 DATED: _____

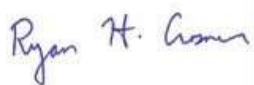
ZAKAY LAW GROUP, APLC

11 By: _____

12 Attorneys for Plaintiffs and the Settlement Class
13 Members

14
15
16 DATED: September 9, 2021

17 RYAN H. CROSNER
18 PAUL M. SMITH
19 OGLETREE, DEAKINS, NASH, SMOAK &
20 STEWART, P.C.

21 By:  _____

Attorneys for Defendant RUSH MEDIA COMPANY LLC

22 DATED: September 9, 2021

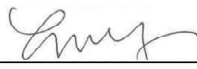
23 KAREN E. POINTER
24 KELLY ANN COLEMAN
25 LERMAN & POINTER LLP

26 By:  _____

27 Attorneys for Defendant RUSH MEDIA COMPANY LLC
28

1 DATED: 9/10/21

GREG A. GARBACZ
LINDA M. TOUTANT
KLINEDINST PC

3 By: _____

5 Attorneys for Defendant XLT MANAGEMENT
6 SERVICES, INC.

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Jacobs, et al., v. Rush Media Company LLC, County of Los Angeles Superior Court Case No. 20STCV32350)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Los Angeles (the “Court”) has been reached between Plaintiff Daniel Jacobs (“Plaintiff”) and Defendants Rush Media Company LLC and XLT Management Services, Inc., (hereinafter collectively “Defendants”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All of the current and former non-exempt employees and independent contractors that worked for Defendant Rush, including those that received payroll services from XLT Management Services, Inc., in California during the Class Period.

The “Class Period” is the period of time running from August 20, 2016 to July 4, 2021.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On August 25, 2020, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of Los Angeles. Plaintiff asserted claims that Defendants: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to reimburse Plaintiff for required expenses in violation of California Labor Code section 2802; and (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203. On November 2, 2020, Plaintiff filed the First Amended Complaint adding a ninth cause of action for Violations of the Private Attorney General Act at Labor Code Section 2698, *et seq.*

Defendants deny and dispute all claims asserted in the Actions. Specifically, Defendants contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendants properly paid members of the class all wages and overtime that was due; that Defendants provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendants provided accurate, itemized wage statements to members of the class; that Defendants did not violate California Business and Professions Code section 17200 *et seq.*; that Plaintiff did not request seating and that the nature of the work does not permit the use of seats; and that Defendants are not liable for any of the penalties claimed or that could be claimed in the Actions.

On May 4, 2021, the Parties participated in an all-day mediation with Honorable William C. Pate., a respected jurist and an experienced mediator of wage and hour class actions. At the conclusion of the full-day mediation, the Parties reached an agreement for settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of Three Hundred Thirty Thousand Dollars (\$330,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payments to the Plaintiff.

After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid From the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$ [REDACTED], for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Gross Settlement Amount (currently \$110,000) and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Payment. Class Representative Service Payment of up to Ten Thousand and Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook.
- PAGA Payment. A payment of \$20,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$15,000.00 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$5,000.00 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Class Members"). The Settlement Share for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the total number of work shifts for all Participating Class Members that occurred during the Class Period and multiplying the result by each individual Participating Class Member's work shifts that occurred during the Class Period. A "work shift" is defined as a shift of work during the Class Period in which, according to Defendants' records, a member of the class presented for work and/or worked at least one hour of work on any such work shift.
- Calculation of PAGA Penalties Payments to PAGA Employees. The Net PAGA Amount shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of work shift worked by all PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of work shifts worked by each respective PAGA Employee during the PAGA Period. "PAGA Employees" means all of the current and former non-exempt employees and independent contractors that worked for Defendant Rush, including those that received payroll services from XLT Management Services, Inc., in California during the PAGA Period. The PAGA Period means the period of August 20, 2019 through and including July 4, 2021.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. Twenty percent (20%) of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent (80%) of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue

Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to PAGA Employees, and each PAGA Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendants, Plaintiff and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means any and all class action claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties but excluding PAGA penalties which are being separately released herein, rights or liabilities, of any nature and description whatsoever that are asserted in the Action or based on the facts and theories pleaded in the operative complaint on file at the time of final approval, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 22, 226.3, 226.7, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders which occurred during the Class Period, and expressly excluding all other claims, including claims for vested, benefits, wrongful termination, unemployment, insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendants, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means any and all claims for penalties under PAGA, arising during the PAGA Period, which were alleged in the operative complaint at the time of final approval by Plaintiff in the Action and Plaintiff's notice letters to the LWDA, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 22, 226.3, 226.7, 510, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendants' records reflect that you have <<____>> Work Shifts worked during the Class Period (August 20, 2016 to July 4, 2021).

Based on this information, your estimated Settlement Share is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out and be excluded from the class action and settlement of the case *Jacobs, et al., v. Rush Media Company LLC, Case No. 20STCV32350*. I understand that by requesting to be excluded, I will receive no money from the Settlement described in this Notice." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *Jacobs, et al., v. Rush Media Company LLC, Case No. 20STCV32350*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
3990 Old Town Ave., Suite C204
San Diego, CA 92110
Tel.: (619) 826-6975
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
3990 Old Town Ave., Suite
C204
San Diego, CA 92110
Tel: (619) 599-8282
Fax: (619) 599-8291
Email:
shani@zakaylaw.com
Website: www.zakaylaw.com

**Counsel for Defendant Rush
Media Company LLC:**

Ryan H. Crosner
Ogletree, Deakins, Nash,
Smoak & Stewart, PC.
400 South Hope Street suite
1200
Los Angeles, CA
Tel.: (213) 329-9800
Fax: (213) 239-9045
E-Mail:
ryan.crosner@ogletree.com

**Counsel for
Defendant XLT
Management
Services, Inc.:**

Greg A. Garbacz
Klinedinst PC
2 Park Palza, Suite
1250
Irvine, CA 92614
Tel.: (714) 542-1800
Fax: (714) 542-3592
E-Mail:
ggarbacz@klinedinstlaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 920012 in Department 1 before Judge Daniel J. Buckley. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to **Jacobs, et al., v. Rush Media Company LLC, Case No. 20STCV32350**, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 3990 Old Town Ave., Suite C204, San Diego, CA 92110.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Participating Class Members who cashed his or her Settlement Share check using the same work shift formula used for distribution of the Net Settlement Amount. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

Zakay Law Group, APC
3990 Old Town Ave. Suite C204
San Diego, California 92110
Telephone: (619) 255-9047
Fax: (858) 404-9203

1. Firm Practice Areas:

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

2. Attorney Shani O. Zakay Biography:

• **PRACITCE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

• **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Court of California (all courts)
United States District Court of Indiana for the Northern District
United States Court of Appeals for the 9th Circuit

• **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Founder, April 2018

SILLDORF LAW, LLP, San Diego, CA (now known as Berding & Weil)
Partner, January 2012 – March 2018

• **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA

Juris Doctor, *magna cum laude*, April 2011

Honors: Dean's List: Spring 2009, Fall 2009, Spring 2010, Fall 2010, Spring 2011.

Academic Achievement Awards: Advanced Legal Research, Constitutional Law II, Criminal Procedure, Insurance Law & Litigation, Law Office Technologies, Property II, Products Liability, Trusts & Estates.

Activities: Associate Editor, *California Western Law Review*
Legal Skills Honor Instructor for Professor Leslie Culver
Vice President, Jewish Student Union

SAN DIEGO STATE UNIVERSITY, San Diego, CA

Bachelor of Science, Business Administration, Management, *cum laude*, May 2008

Honors: Dean's List: Spring 2007 and Fall 2007

- **COMMUNITY SERVICE**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Spring 2016, 2018
Moot Court Judge

COMMUNITY LAW PROJECT, San Diego, CA
October 2018 – Present
Volunteer Attorney on Employment Matters

3. **Attorney Jackland K. Hom Biography:**

- **PRACTICE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation.

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Courts of California (all courts)

- **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Associate, January 2021 - present

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP, San Diego, CA
Associate, November 2019 – September 2020

- **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Juris Doctor, April 2019

Honors: Dean's List: Fall 2017, Spring 2018.

Academic Achievement Awards: Advanced Prosecution Function.

Activities: Senior Editor, *California Western Law Review*
President, Asian Pacific American Law Students Association

UNIVERSITY OF CALIFORNIA, RIVERSIDE, Riverside, CA
Bachelor of Arts: Political Science, English Literature, June 2015
Honors: Dean's List

4. Class Action & Representative Cases:

1. Hubscher v. Bodyspirit, LLC

Court	San Diego
Case No.	37-2016-00021261-CU-OE-CTL
Nature	Independent Contractor Misclassification
Status	Settled

2. Henry v. InMotion Entertainment Group, LLC

Court	San Francisco
Case No.	CGC-18-565643
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

3. Moore v. Zirx Transportation

Court	San Francisco
Case No.	CGC-18-566655
Nature	Independent Contractor Misclassification
Status	Settled

4. Pasallo v. GSG Protective Services

Court	San Diego
Case No.	37-2018-00037611-CU-OE-CTL
Nature	Meal/Rest Break claims
Status	Settled

5. Villaroman v. C.C.H.C.

Court	Orange County
Case No.	30-2018-01013128-CU-OE-CXC
Nature	Meal/Rest Break claims
Status	Settled

6. Flores v. Plastic Express

Court	Los Angeles
Case No.	BC719071
Nature	Meal/Rest Break and minimum wage claims
Status	Settled

7. Tressler v. Spoonful Management

Court	Los Angeles
Case No.	BC719405
Nature	Meal/Rest Break claims
Status	Settled

8. Leymaster v. Toms Sierra Company, Inc.

Court	Placer
Case No.	SCV0041735
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

9. Murphy v. Rockler Retailer Group, Inc.

Court	Sacramento
Case No.	34-2018-00241374
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

10. Bruemmer v. Tempur Retail Stores, LLC.

Court	Marin
Case No.	CIV1803646
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

11. Christina Cummings v. G6 Hospitality, LLC

Court	San Diego
Case No.	37-2018-00056207-CU-OE-CTL 19CV122 GPC LL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

12. Nicolai Laguatan v. Prevent LSS

Court	San Diego
Case No.	37-2018-00057434-CU-OE-CTL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

13. Lisa Ramirez v. Carefusion Resources, LLC

Court	San Diego
Case No.	37-2018-00058078-CU-OE-CTL 3:18-CV-02852-BEN-MSB
Nature	Overtime and Meal and Rest Breaks
Status	Settled

14. Charles Ornelas v. C&A Transportation Services

Court	San Diego
Case No.	37-2018-00061289-CU-OE-CTL
Nature	Minimum Wage and Meal/Rest Break claims
Status	Settled

15. Luz Marin v. California Marine Cleaning

Court	San Diego
Case No.	37-2018-00063483-CU-OE-CTL
Nature	Meal Break claims
Status	Settled

16. Christian Van Cleave v. Sunrise Senior Living Management

Court	San Diego
Case No.	37-2018-00061960-CU-OE-CTL 19CV0044BEN NLS
Nature	Regular rate and meal premium miscalculation
Status	Settled

17. Heather McIntyre v. JRR Enterprises

Court	Sacramento
Case No.	34-2019-00251220
Nature	Overtime and Meal and Rest Periods
Status	Settled

18. Lori Phipps v. Soapy Joe's

Court	San Diego
Case No.	37-2019-00017673-CU-OE-CTL
Nature	Tip Polling and Meal and Rest Periods
Status	Settled

19. Heather Broughton v. NFG San Francisco, LLC

Court	San Francisco
Case No.	CGC-19-574657
Nature	Meal and Rest Breaks
Status	Settled

20. Marcos Antonios v. Interface Rehab, LLC

Court	Orange County
Case No.	30-2019-01067547-CU-OE-CXC
Nature	Meal and Rest Breaks and Reporting Time Violations
Status	Settled

21. Tiffany Rodriguez v. Circle K

Court	Riverside
Case No.	RIC 1901407 5:19-cv-00469
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

22. Derik Scott et al. v. Ultimate Performance

Court	Los Angeles
Case No.	19STCV22823
Nature	Piece Rate Pay violations
Status	Settled

23. Raymond Frazier v. Asa Carlton

Court	San Diego
Case No.	37-2019-00036147-CU-OE-CTL
Nature	Overtime Wages
Status	Settled

24. John Moreno v. Da Kitchen

Court	San Diego
Case No.	37-2019-00024885-CU-OE-CTL
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

25. Penny Lane v. International Aero Clubs, LLC

Court	San Diego
Case No.	37-2019-00021793-CU-OE-CTL
Nature	Meal and Rest Breaks and Regular Rate Miscalculation
Status	Settled

26. Amber Price v. DMSD Restaurants

Court	San Diego
Case No.	37-2019-00024062-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

27. Jamaal Johnson v. Volt Management Corp

Court	Los Angeles
Case No.	19STCV16466
Nature	On Duty Meal Break violations
Status	Settled

28. Ezzat Menias v. All American Private Security

Court	Orange County
Case No.	30-2019-01085120-CU-OE-CXC
Nature	On Duty Meal Break violations
Status	Settled

29. Mark Connor v. Ascendant Marketing

Court	San Diego
Case No.	37-2019-00026864-CU-OE-CTL
Nature	Minimum Wage violations
Status	Settled

30. Niki Nunez v. Home Depot

Court	San Joaquin
Case No.	STK-CV-406-2019-6656
Nature	Overtime Wages violations
Status	Settled

31. Alma Salazar v. Frontier Toyota

Court	Los Angeles
Case No.	19STCV20382
Nature	Rest Break violations
Status	Settled

32. Josefina Garces v. Kar Auction Services

Court	Los Angeles
Case No.	19STCV28489
Nature	Rest Break violations
Status	Settled

33. Madison Weiss v. Niznik Behavior

Court	San Diego
Case No.	37-2019-00039441-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

34. Jimmy Mack v. ERM Enterprises

Court	Sacramento
Case No.	2019-00262259
Nature	Meal and Rest Break violations
Status	Settled

35. Josefina Garces v. DriverDo

Court	Los Angeles
Case No.	19STCV32773
Nature	Independent Contractor Misclassification
Status	In Litigation

36. Perseus Porras v. Tantalum Restaurant

Court	Los Angeles
Case No.	19STCV31015
Nature	Unpaid Wages + Missed Meal/Rest Breaks
Status	Settled

37. Dorcena Deutsch v. Scripps

Court	San Diego
Case No.	37-2019-00036333-CU-OE-CTL
Nature	Regular Rate Miscalculation for Nurses
Status	Settled

38. Josalyn O'Quinn v. Laugh Factory

Court	Los Angeles
Case No.	19STCV28155
Nature	Regular Rate Miscalculation, Wage Theft
Status	In Litigation

39. Nicholas Leon v. Miller Event Management

Court	San Luis Obispo
Case No.	19CV-0435
Nature	Meal/Rest Breaks, Reporting Time, 2802
Status	Settled

40. Aaris Watts v. TRL Systems

Court	Orange County
Case No.	30-2019-01102457-CU-OE-CXC
Nature	Meal/Rest Breaks, Reporting Time
Status	In Litigation

41. Faith Smith v. Island Pizza

Court	Contra Costa
Case No.	MSC19-01654
Nature	Meal/Rest Breaks, 226, 2802
Status	Settled

42. Johnathan Roa v. Otay Mesa Sales

Court	San Diego
Case No.	37-2019-00057735-CU-OE-CTL
Nature	Meal/Rest Breaks, 226
Status	In Litigation

43. Sabrina Ivon v. Sinclair Television of California

Court	Humboldt
Case No.	DR190699
Nature	Vaquero
Status	In Litigation

44. Jonathan Mitchell v. Mack Trucking

Court	San Bernardino
Case No.	CIVDS1928334
Nature	Independent Contractor Misclassification
Status	In Litigation

45. Curtis Edwards v. Resolve Group

Court	San Francisco
Case No.	CGC-19-579095
Nature	Meal & Rest Breaks + 2802
Status	In Litigation

46. Elena Kiseleva v. TotalMed Staffing, Inc

Court	Santa Clara
Case No.	19CV354635
Nature	Overtime + Meal and Rest Breaks
Status	Settled

47. Richard Jer Vang v. Bridge Property Management

Court	Alameda
Judge	Winfred Smith
Nature	Off the clock work, regular rate miscalc.
Status	Settled

48. Madison Marrero v. Stat Med

Court	Alameda
Case No.	HG19043214
Nature	Unpaid Overtime + Meal/Rest Breaks
Status	In Litigation

49. Brian Reyes v. Stowasser Buick-GMC

Court	Santa Barbara
Case No.	19CV06183
Nature	Vaquero
Status	Settled

50. Erik Foss v. Anderson Hospitality, Inc.

Court	Shasta
Case No.	195317
OPC	Wood Smith – Andrew Kleiner
Nature	Meal and Rest Breaks, Regular Rate
Status	In Litigation

51. Griselda Duran v. EmployBridge

Court	Kern
Case No.	BCV-20-101583
Nature	Regular Rate, 226
Status	In Litigation

52. Luis Rendon v. Healthcare Investments, Inc.

Court	Los Angeles
Case No.	20STCV39775
Nature	Meal and Rest Breaks
Status	In Litigation

53. Richard Melead v. TVI, Inc.

Court	Orange
Case No.	30-2020-01140887-CU-OE-CXC
Nature	Regular Rate, 226 (Magadia)
Status	In Litigation

54. David Spencer v. Asset Gas, Inc.

Court	San Diego
Case No.	37-2020-00024642-CU-OE-CTL
Nature	Meal and Rest Breaks
Status	Settled

55. Thomas Haven v. California Vocations, Inc.

Court	Butte
Case No.	20CV01514
Nature	Regular Rate + Meal and Rest Breaks
Status	In Litigation

56. Estefania Renteria v. Love's Country

Court	Kern
Case No.	BCV-20-101260
Nature	226
Status	In Litigation

57. Rachel Latin v. OneMain General Services Corp.

Court	Stanislaus
Case No.	CV-20-002498
Nature	Dart + Magadia
Status	In Litigation

58. Kalaina Dula v. 2 Kings Gaming, Inc.

Court	Merced
Case No.	#20CV-02289
Nature	Meal and Rest Breaks
Status	In Litigation

59. Jie Xu v. HT Multinational

Court	San Bernardino
Case No.	CIV-DS2015679
Nature	Exempt Misclassification
Status	In Litigation

60. Yvette Molina v. Hawaiian Airlines

Court	Los Angeles
Case No.	20STCV28079
Nature	Meal and Rest + Magadia
Status	In Litigation

61. Reinald Pillsbury v. T & T Restaurants CA

Court	Del Norte
Case No.	CVUJ-2020-1214
Nature	Meal/Rest Breaks + Regular Rate
Status	Settled

62. Luis de Jesus v. Guardian Angel Home Care

Court	San Diego
Case No.	37-2020-00021049-CU-OE-CTL
Nature	Piece-Rate
Status	In Litigation

63. Charles Sandlin v. Secure Nursing Services, Inc.

Court	Los Angeles
Case No.	20STCV25675
Nature	Regular Rate
Status	Settled

64. Gabriel Mendez v. Bondz, Inc.

Court	San Joaquin
Case No.	STK-CV-UOE-2020-0007486
Nature	Piece-Rate
Status	In Litigation

65. James Conley v. Siskiyou Forest Products

Court	Shasta
Case No.	195819
Nature	Regular Rate and Meal/Rest Breaks + 226
Status	In Litigation

66. Alex Castellanos v. Southwest Patrol

Court	San Diego
Case No.	37-2020-00024905-CU-OE-CTL
Nature	Augutus
Status	In Litigation

67. Damien Hampton v. Pegasus Investors

Court	Sacramento
Case No.	34-2020-00281394-CU-BT-GDS
Nature	Unlawful Housing
Status	In Litigation

68. Tamara Perkins v. FSEI

Court	Sacramento
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Case No.	34-2020-00287054
Nature	Regular Rate
Status	In Litigation

69. Rodney Stovall v. Javelin Logistics Company

Court	Alameda
Case No.	RG20075705
Nature	Meal / Rest Breaks
Status	In Litigation

70. Gabrielle Boyd v. Bluestone Lane Holdings, LLC

Court	San Francisco
Case No.	CGC-20-585787
Nature	Tip Pooling ; Magadia
Status	In Litigation

71. Elias Kaser v. Aviation Consultants, Inc.

Court	Orange County
Case No.	
Nature	Meal / Rest Breaks, Regular Rate
Status	Settled

72. Christopher Chacon v. Panda Motors, Inc.

Court	San Bernardino
Case No.	CIV DS2022220
Nature	Regular Rate
Status	In Litigation

73. Willie Lang v. Pathways

Court	San Diego
Case No.	37-2019-00049969
Nature	Off the Clock
Status	In Litigation

74. Norma Reyes v. Simpson Garden Grove, Inc.

Court	Orange
Case No.	30-2020-0117564-CU-OE-CJC
Nature	Meal / Rest Breaks
Status	Settled

75. Daniel Jacobs v. Rush Media Company

Court	Los Angeles
Case No.	20STCV32350
Nature	Independent Contractor Misclassification
Status	In Litigation

76. Luis Ledesma v. TVJ Sons I, Inc.

Court	Santa Barbara
Case No.	20CV03573
Nature	Vaquero
Status	In Litigation

77. Kevin Cianfarani v. Career Strategies Temporary, Inc. (MPI)

Court	Los Angeles
Case No.	
Nature	Off the clock work
Status	Settled

78. Hector Avitia v. LAZ Parking

Court	San Diego
Case No	37-2020-00030133-CU-OE-CTL
Nature	Magadia + Augustus
Status	In Litigation

79. Sukhraj Kaur v. ACES 2020, LLC

Court	Contra Costa
Case No.	C20-02482
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

80. Boaventura v. Rei Do Gado

Court	Contra Costa
Case No.	37-2020-00032342-CU-OE-CTL
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

81. James Rachal v. ELG Metals, Inc.

Court	Los Angeles
Case No.	20STCV45861
Nature	Meal/Rest Breaks, Regular Rate
Status	In Litigation

82. Evelyn Nwansi v. Princeton Healthcare Center, LLC

Court	Alameda
Case No.	RG20083664
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

83. Michael Ashlock v. Advantis Medical Staffing

Court	San Diego
Case No.	37-2020-00022305-CU-OE-CTL
Nature	Regular Rate
Status	Settled

84. Moe Popal v. Ameriprise Auto & Home Insurance

Court	Riverside
Case No.	RIC2000006
Nature	Exempt/Non-Exempt Misclassification
Status	Settled

85. Mark Williams v. Web to Door

Court	San Francisco
Case No.	
Nature	Meal and Rest Break + Regular Rate
Status	In Litigation

86. Jessica Barackman v. Teaz N Pleaz, Inc.

Court	El Dorado
Case No.	SC20200179
Nature	Meal/Rest Breaks, Seating
Status	In Litigation

87. Nicolas Neutall v. Urban Alchemy

Court	San Francisco
Case No.	CGC-20-588622
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

EXHIBIT 3



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August 20, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

XLT MANAGEMENT SERVICES, INC.
c/o CT Corporation Systems
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Certified U.S. Mail with Return Receipt

RUSH MEDIA COMPANY, LLC
c/o Tim Eichorst
503 Moravian Valley Road
Waunakee, WI 53597
Certified U.S. Mail with Return Receipt

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents Daniel Jacobs (“Jacobs”) and other aggrieved employees in a class action against Rush Media Company, LLC and XLT Management Services, Inc. (“Defendants”). This office intends to file the enclosed Class Action Complaint on behalf of Jacobs and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Jacobs worked for Defendants as a Camera Operator in California from 2015 – November 2019. Throughout his employment with Defendants, Jacobs was misclassified as an independent contractor and denied minimum wages, regular wages and overtime wages, among other things.

As a consequence, Plaintiff contends that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages, failed to provide accurate wage statements and failed to provide wages when due upon separation. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

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ATTORNEYS FOR PLAINTIFF DANIEL JACOBS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DANIEL JACOBS, an individual, on
behalf of himself, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

RUSH MEDIA COMPANY, LLC, a
Wisconsin limited liability company; XLT
MANAGEMENT SERVICES, INC., an
Illinois corporation; and DOES 1 through
30, Inclusive;

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR JURY TRIAL

1 Plaintiff Daniel Jacobs ("PLAINTIFF"), an individual, on behalf of himself and all other
2 similarly situated current and former employees alleges on information and belief, except his own acts
3 and knowledge which are based on personal knowledge, the following:

4 **INTRODUCTION**

5 1. PLAINTIFF is an individual who worked as a video camera operator in California for
6 defendants RUSH MEDIA COMPANY, LLC and XLT MANAGEMENT SERVICES, INC
7 (hereinafter collectively "DEFENDANTS"). Plaintiff alleges that DEFENDANTS have violated and
8 continues to violate the California Labor Code protections applicable to California employees because
9 DEFENDANTS have misclassified its California employees as independent contractors. In order to
10 provide services to their customers, DEFENDANTS hire California workers to aid DEFENDANTS
11 in providing services in the usual course of DEFENDANTS' business to their clients. The costs, as
12 proscribed by law, of the personnel hired to work for DEFENDANTS, includes not only the pay of
13 these employees but the cost of the employer's share of tax payments to the federal and state
14 governments for income taxes, social security taxes, Medicare insurance, unemployment insurance
15 and payments for workers' compensation insurance. To avoid the payment of these legally proscribed
16 expenses to the fullest extent possible, DEFENDANTS devised a scheme to place the responsibility
17 for the payment of these costs and expenses of DEFENDANTS on the shoulders of PLAINTIFF and
18 other similarly situated California employees. As employer, DEFENDANTS are legally responsible
19 for the payment of all these expenses. This lawsuit is brought in order to collect the wages due to
20 PLAINTIFF and all those similarly situated misclassified independent contractors as
21 DEFENDANTS' employees, the cost of the employer's share of payments to the federal and state
22 governments for income taxes, social security taxes, Medicare insurance, unemployment insurance
23 and payments for workers' compensation insurance, plus penalties and interest.

24 **THE PARTIES**

25 2. Defendant RUSH MEDIA COMPANY, LLC, ("RUSH MEDIA") is a limited liability
26 company of unknown origin, that at all relevant times mentioned herein conducted and continues to
27 conduct substantial business in the State of California, County of Los Angeles.

28 3. Defendant XLT MANAGEMENT SERVICES, INC. ("XLT"), is an Illinois

1 corporation, that is registered to do business in the State of California and at all relevant times
2 mentioned herein conducted and continues to conduct substantial business in the State of California,
3 County of Los Angeles.

4 4. RUSH MEDIA provides, among other things, video, field production and post-
5 production packaging services for live television events for its clients, major television networks and
6 sports leagues, such as Fox Sports Networks, CBS Sports and ESPN. RUSH MEDIA utilizes
7 independent contractors, rather than employees, to provide its clients with video, field production and
8 post-production packaging services for live television events.

9 5. XLT is one of the nation's leading providers of labor management services for major
10 broadcast networks, as well as clients in sports, entertainment, concerts, conventions, corporate
11 functions and digital media, including RUSH MEDIA.

12 6. DEFENDANTS were the joint employers of PLAINTIFF as evidenced by Wage
13 Statements, Employee Handbooks, Independent Contractor Agreements, and other employment
14 documents and by the company PLAINTIFF performed work for respectively and are therefore joint
15 responsible as employers for the conduct alleged herein.

16 7. The true names and capacities, whether individual, corporate, subsidiary, partnership,
17 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
18 PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc.
19 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
20 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
21 believes, and based upon that information and belief allege, that the Defendants named in this
22 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively "DEFENDANTS"), are
23 responsible in some manner for one or more of the events and happenings that proximately caused the
24 injuries and damages hereinafter alleged.

25 8. The agents, servants and/or employees of the DEFENDANTS and each of them acting
26 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the
27 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
28 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.

1 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
2 DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss
3 sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or
4 employees.

5 9. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
6 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
7 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
8 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
9 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

10 10. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
11 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
12 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
13 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
14 for each underpaid employee.

15 11. PLAINTIFF worked for DEFENDANTS as an independent contractor, operating video
16 cameras for live sporting events throughout California between November 2016 and November 2019.

17 12. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
18 individuals that worked for defendants RUSH MEDIA and/or XLT in California as independent
19 contractors ("CALIFORNIA CLASS") at any time between April 6, 2020 on a date determined by the
20 Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
21 CLASS members is under five million dollars (\$5,000,000.00).

22 13. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair
23 and deceptive business practices whereby DEFENDANTS retained and continues to retain wages and
24 other benefits due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

25 14. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
27 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past
28 and current unlawful conduct, and all other appropriate legal and equitable relief.

THE CONDUCT

A. Misclassification

15. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual as an independent contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” It is further provided that, in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal. Labor Code § 226.8.

16. Here, DEFENDANTS willfully misclassified PLAINTIFF and other similarly situated California workers who provided DEFENDANTS with video, field production and post-production packaging services for live television events for DEFENDANTS’ clients. In other words, PLAINTIFF and other similarly situated California workers provided DEFENDANTS with work and services within the usual course of DEFENDANTS’ business. DEFENDANTS controlled and directed the work performed by PLAINTIFF and the other similarly situated misclassified California workers by, among other things, assigning events, scheduling hours of work, providing equipment, issuing written policies and procedures for the performance of work and conduct in the workplace. Finally, PLAINTIFF and the other similarly situated misclassified California workers are not and were not engaged in a customarily independently established trade, occupation or business as the same nature of the work performed. DEFENDANTS engaged in a pattern and practice of misclassifying California workers as independent contractors, hired to perform work and services core to DEFENDANTS’ businesses, in violation of California Labor Code Section 226.8.

17. Upon hire, the position was represented by DEFENDANTS to PLAINTIFF and the other workers as an independent contractor position in exchange for, in most circumstances, a flat rate of pay, and in other instances an hourly rate of pay, for the time they spend providing labor and services to DEFENDANTS’ third party customers. In many instances, PLAINTIFF and the members of the CALIFORNIA CLASS were not compensated at least the applicable minimum wage for time spent

1 providing labor and services to DEFENDANTS' third party customers. Similarly, PLAINTIFF and
2 other members of the CALIFORNIA CLASS were not compensated overtime wages for any of their
3 time spent working in excess of eight (8) hours in a workday, twelve (12) hours in a workday, and/or
4 forty (40) hours in a workweek. PLAINTIFF and other members of the CALIFORNIA CLASS were
5 paid the hourly rate to perform labor services on DEFENDANTS' behalf. PLAINTIFF and other
6 workers were not compensated any other wages besides the non-negotiable hourly rate, and they were
7 not allowed to record their time while they waited for DEFENDANTS to give them work.
8 DEFENDANTS did not pay PLAINTIFF and other CALIFORNIA CLASS members for the time spent
9 driving to and from jobs, and all the other time they spent working for DEFENDANTS outside of the
10 job assignment they were placed at with DEFENDANTS' third party customers. The finite set of tasks
11 required to be performed by the workers is, when notified via cell phone, travel to DEFENDANTS'
12 customers to perform jobs, including but not limited to, setting up and breaking down camera
13 equipment and shooting various sporting events, all in accordance with DEFENDANTS' business
14 practices and policies.

15 18. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
16 CLASS perform work subject to the control of DEFENDANTS in that DEFENDANTS had the
17 authority to exercise complete control over the work performed and the manner and means in which
18 the work was performed. DEFENDANTS provided the customers and DEFENDANTS provided the
19 instructions as to how to perform their work.

20 19. California Labor Code § 3357 defines "employee" as "every person in the service of an
21 employer under any appointment or contract of hire or apprenticeship, express or implied, oral or
22 written, whether lawfully or unlawfully employed." Additionally, to the California Labor Code's
23 presumption that workers are employees, the California Supreme Court has determined the most
24 significant factor to be considered in distinguishing an independent contractor from an employee is
25 whether the *employer or principal has control or the right to control the work both as to the work*
26 *performed and the manner and means in which the work is performed*. DEFENDANTS heavily
27 controlled both the work performed and the manner and means in which the PLAINTIFF and other
28 workers performed their work in that:

1 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
2 involved in a distinct business, but instead were provided with instructions as to how to perform their
3 work and the manner and means in which the work was to be performed by means of DEFENDANTS'
4 and DEFENDANTS' customers manuals and written instructions;

5 (b) PLAINTIFF and other members of the CALIFORNIA CLASS were continuously
6 provided with training and supervision, including following DEFENDANTS' company documents,
7 and received training from DEFENDANTS as to how and in what way to perform the services;

8 (c) DEFENDANTS set the requirements as to what policies and procedures all of
9 the workers were to follow, including but not limited to, hourly rates, location of assignment, where to
10 park, and what to wear;

11 (d) PLAINTIFF and other members of the CALIFORNIA CLASS had no
12 opportunity for profit or loss because DEFENDANTS only paid these workers an hourly rate.
13 DEFENDANTS controlled and assigned the workers which tasks were to be performed;

14 (e) PLAINTIFF and other members of the CALIFORNIA CLASS performed
15 services and labor which are part of the core of DEFENDANTS' principal business and is closely
16 integrated with and essential to the employer's business of services and labor to their customers;

17 (f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the
18 work themselves and did not hire others to perform their work for them;

19 (g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the
20 authority to make employment-related personnel decisions;

21 (h) PLAINTIFF and other members of the CALIFORNIA CLASS performed their
22 work in a particular order and sequence in accordance with DEFENDANTS and DEFENDANTS
23 customers company policies; and,

24 (i) DEFENDANTS had the "right" to control every critical aspect of
25 DEFENDANTS labor operation in that DEFENDANTS provided the customer, assigned where
26 PLAINTIFF and other members of the CALIFORNIA CLASS were to go, assigned the hourly rate
27 or flat rate, and step by step instructions to PLAINTIFF and other members of the CALIFORNIA
28 CLASS as to the entire process of working at their assigned locations. PLAINTIFF and other workers

1 provided services and labor for DEFENDANTS customers and were not actually in business for
2 themselves.

3 20. As a result, stripped of all the legal fictions and artificial barriers to an honest
4 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
5 CLASS on the one hand, and DEFENDANTS on the other hand, PLAINTIFF and all the other members
6 of the CALIFORNIA CLASS are and were employees of DEFENDANTS and not independent
7 contractors of DEFENDANTS and should therefore be properly classified as non-exempt, hourly
8 employees.

9 21. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
10 members as defined by DEFENDANTS was executed by them through the performance of non-exempt
11 labor.

12 22. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
13 exempt labor subject to DEFENDANTS' complete control over the manner and means of performance,
14 DEFENDANTS instituted a blanket classification policy, practice and procedure by which all of these
15 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
16 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business related
17 expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members were also
18 required to pay DEFENDANTS 's share of payroll taxes and mandatory insurance premiums. As a result
19 of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF and the other
20 CALIFORNIA CLASS Members who performed this work for DEFENDANTS, DEFENDANTS
21 committed acts of unfair competition in violation of the California Unfair Competition law, Cal. Bus. &
22 Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and
23 procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA CLASS members
24 as employees and thereby failed to pay them wages for all time worked, reimbursement of business
25 related expenses, failed to provide them with meal and rest breaks, and failed to reimburse these
26 employees for the employer's share of payroll taxes and mandatory insurance.

27 23. DEFENDANTS, as a matter of law, has the burden of proving that employees are
28 properly classified and that DEFENDANTS otherwise complies with applicable laws. DEFENDANTS,

1 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
2 Members as independent contractors in violation of the California Labor Code and regulations
3 promulgated thereunder.

4 **B. Meal Period Violations**

5 24. In California, an employer may not employ an employee for a work period of more than
6 five hours per day without providing the employee with a duty-free meal period of not less than thirty
7 minutes, except that if the total work period per day of the employee is no more than six hours, the
8 meal period may be waived by mutual consent of both the employer and employee. A second duty-free
9 meal period of not less than thirty minutes is required if an employee works more than ten hours per
10 day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period
11 may be waived by mutual consent of the employer and employee only if the first meal period was not
12 waived. Labor Code Section 512.

13 25. If an employer fails to provide an employee a duty-free meal period in accordance with
14 an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular
15 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
16 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

17 26. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
18 independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA
19 CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully
20 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were
21 required from time-to-time to perform work as ordered by DEFENDANTS for more than five (5) hours
22 during some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed
23 to provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for
24 some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of
25 work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
26 without additional compensation and in accordance with DEFENDANTS' strict corporate policy and
27 practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided
28 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

C. Rest Period Violations

27. The applicable IWC Wage Order requires that employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a “major fraction” of four. A rest period is not required for employees whose total daily work time is less than three and one-half hours. The rest period is counted as time worked and therefore, the employer must pay for such periods.

28. If an employer fails to provide an employee a rest period in accordance with an applicable IWC Order, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if an employer does not provide all of the rest periods required in a workday, the employee is entitled to one additional hour of pay for that workday, not one additional hour of pay for each rest period that was not provided during that workday.

29. From time-to-time during the CLASS PERIOD, as a result of their misclassification as independent contractors and their rigorous work schedules PLAINTIFF and other CALIFORNIA CLASS members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As a result of their misclassification and rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

D. Failure to Pay Minimum, Regular and Overtime Wages

30. From time-to-time during the CLASS PERIOD, DEFENDANTS failed to accurately

1 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
2 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
3 are required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked,
4 meaning the time during which an employee was subject to the control of an employer, including all
5 the time the employee was permitted or suffered to permit this work. DEFENDANTS required
6 PLAINTIFF and CALIFORNIA CLASS members to work off the clock without paying them for all
7 the time they were under DEFENDANTS' control. PLAINTIFF and other CALIFORNIA CLASS
8 Members also worked more than eight hours in a workday and/or forty hours in a workweek, but
9 DEFENDANTS failed to pay these employees overtime pay as DEFENDANTS only paid a flat rate or
10 a flat hourly rate for all time worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS
11 members forfeited minimum wages and overtime wage compensation by working without their time
12 being correctly recorded and without compensation at the applicable rates. DEFENDANTS' policy and
13 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is
14 evidenced by DEFENDANTS' business records. As a result, DEFENDANTS failed to compensate
15 PLAINTIFF and the members of the CALIFORNIA CLASS all minimum, regular and overtime wages
16 for all hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

17 **E. Failure to Reimburse Necessary and Required Business Expenses**

18 31. Under California Labor Code Section 2802, employers are required to indemnify
19 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
20 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
21 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
22 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
23 employee, at the time of obeying the directions, believed them to be unlawful."

24 32. From time-to-time during the CLASS PERIOD, DEFENDANTS as a matter of corporate
25 policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and
26 indemnify PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
27 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
28 behalf of DEFENDANTS.

33. From time-to-time during the CLASS PERIOD, in the course of their employment PLAINTIFF and other CALIFORNIA CLASS members as a business expense, were required by DEFENDANTS to use personal cellular phones and use their personal vehicles as a result of and in furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost associated with the use of the personal cellular phones and personal vehicles for DEFENDANTS' benefit. In order to work for DEFENDANTS, PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal vehicles to travel to different locations each work shift and were also required to use their personal cell phones to review, receive and accept job assignments and as such it is mandatory to have a cell phone. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones on behalf of and for the benefit of DEFENDANTS. Further, PLAINTIFF and other CALIFORNIA CLASS members were also not reimbursed or indemnified by DEFENDANTS for the cost associated with using their personal vehicles while performing for DEFENDANTS. Moreover, PLAINTIFF and other CALIFORNIA CLASS members were also required from time to time to pay for parking costs at certain live entertainment venues and were not reimbursed for those costs. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited to, costs related to travel all on behalf of and for the benefit of DEFENDANTS.

F. Wage Statement Violations

34. California Labor Code Section 226 requires an employer to furnish its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (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 the employee's 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

1 corresponding number of hours worked at each hourly rate by the employee.

2 35. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of
3 DEFENDANTS' intentional and willful misclassification of PLAINTIFF and the members of the
4 CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANTS issued
5 inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS
6 that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
7 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the
8 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
9 last four digits of the employee's social security number or an employee identification number other
10 than a social security number, (8) the name and address of the legal entity that is the employer and, (9)
11 all applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate by the employee.

13 36. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
14 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
15 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
16 payroll error due to clerical or inadvertent mistake.

17 **G. Unfair Competition**

18 37. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS
19 members, DEFENDANTS committed acts of unfair competition in violation of the California Unfair
20 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
21 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
22 CALIFORNIA CLASS members as employees. The proper classification of these employees is
23 DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the obligation to meet
24 this burden, DEFENDANTS failed to pay all required wages for work performed by PLAINTIFF and
25 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations
26 promulgated thereunder as herein alleged.

27 38. PLAINTIFF as a worker for DEFENDANTS, was classified by DEFENDANTS as an
28 independent contractor and thus did not receive pay for all time worked, including minimum and

overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice which did not provide for mandatory meal and rest breaks. To date, DEFENDANTS has not fully paid PLAINTIFF all wages still owed to him or any penalty wages owed to him under California Labor Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

THE CALIFORNIA CLASS

39. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

40. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

41. All CALIFORNIA CLASS members who performed and continue to perform this work for DEFENDANTS during the CLASS PERIOD are similarly situated in that they are subject to DEFENDANTS' policy and practice that required them to perform work without compensation as required by law.

42. During the CLASS PERIOD, DEFENDANTS violated the rights of the PLAINTIFF and the CALIFORNIA CLASS members under California law, without limitation, in the following manners:

(a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), in that DEFENDANTS, while acting as employer, devised and implemented a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully, unfairly and deceptively shoulder the cost of DEFENDANTS' wages for all unpaid wages, business related expenses, and DEFENDANTS' share of employment taxes, social security taxes, unemployment

insurance and workers' compensation insurance;

(b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS members as independent contractors;

(c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company policy, practice and procedure that accurately determined the amount of working time spent by PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

(d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required meal and rest breaks;

(e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and,

(f) Committing an act of unfair competition in violation of the UCL, by violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the unpaid overtime to the benefit of DEFENDANTS.

43. As a result of DEFENDANTS' policies, practices and procedures, there are numerous questions of law and fact common to all CALIFORNIA CLASS members who worked for during the CLASS PERIOD. These questions include, but are not limited, to the following:

(a) Whether PLAINTIFF and other CALIFORNIA CLASS members were misclassified as independent contractors by DEFENDANTS;

(b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded all the protections of the California Labor Code that apply when properly classified as non-exempt employees;

1 (c) Whether DEFENDANTS' policies, practices and pattern of conduct described in
2 this Complaint was and is unlawful;

3 (d) Whether DEFENDANTS unlawfully failed to pay their share of state and federal
4 employment taxes as required by state and federal tax laws;

5 (e) Whether DEFENDANTS' policy, practice and procedure of classifying the
6 CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all
7 time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable
8 provisions of California State law;

9 (f) Whether DEFENDANTS unlawfully failed to keep and furnish the
10 CALIFORNIA CLASS members with accurate records of all time worked;

11 (g) Whether DEFENDANTS have engaged in unfair competition by the above-listed
12 conduct; and,

13 (h) Whether DEFENDANTS' conduct was willful.

14 44. This Class Action meets the statutory prerequisites for the maintenance of a Class Action
15 as set forth in Cal. Code of Civ. Proc. § 382, in that:

16 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
17 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
18 parties and the Court;

19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
20 raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every
21 CALIFORNIA CLASS member;

22 (c) The claims of the representative PLAINTIFF are typical of the claims of each
23 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was
24 classified as an independent contractor upon hiring based on the defined corporate policies and practices
25 and labors under DEFENDANTS' procedure that failed to properly classify the PLAINTIFF and the
26 CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of
27 DEFENDANTS' employment practices. PLAINTIFF and the CALIFORNIA CLASS members were
28 and are similarly or identically harmed by the same unlawful, unfair, deceptive and persuasive pattern

1 of misconduct engaged in by DEFENDANTS by deceptively telling all the CALIFORNIA CLASS
2 members that they were not entitled to minimum wages, the employer's share of payment of payroll
3 taxes and mandatory insurance, and reimbursement for business expenses based on the defined corporate
4 policies and practices, and unfairly failed to pay these employees who were improperly classified as
5 independent contractors; and,

6 (d) The representative PLAINTIFF will fairly and adequately represent and protect
7 the interest of the CALIFORNIA CLASS, and has retained counsel who is competent and experienced
8 in Class Action litigation. There are no material conflicts between the claims of the representative
9 PLAINTIFF and the CALIFORNIA CLASS members that would make class certification inappropriate.
10 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all employees in the
11 CALIFORNIA CLASS.

12 45. In addition to meeting the statutory prerequisites to a Class Action, this Action is properly
13 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

14 (a) Without class certification and determination of declaratory, injunctive, statutory
15 and other legal questions within the class format, prosecution of separate actions by individual members
16 of the CALIFORNIA CLASS will create the risk of:

17 (i) Inconsistent or varying adjudications with respect to individual members
18 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties
19 opposing the CALIFORNIA CLASS; and/or,

20 (ii) Adjudication with respect to individual members of the CALIFORNIA
21 CLASS which would as a practical matter be dispositive of the interests of the other members not party
22 to the adjudication or substantially impair or impeded their ability to protect their interests.

23 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
24 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
25 CALIFORNIA CLASS as a whole in that DEFENDANTS uniformly classified and treated the
26 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
27 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as
28 independent contractors, and thereby denied these employees' wages and payments for business

1 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

2 (i) With respect to the First Cause of Action, the final relief on behalf of the
3 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the
4 PLAINTIFF seeks declaratory relief holding that DEFENDANTS' policies and practices constitute
5 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
6 declared to constitute unfair competition.

7 (c) Common questions of law and fact exist as to members of the CALIFORNIA
8 CLASS with respect to the practices and violations of California and federal law as listed above, and
9 predominate over any question affecting only individual members, and a Class Action is superior to
10 other available methods for the fair and efficient adjudication of the controversy, including consideration
11 of:

12 (i) The interest of the CALIFORNIA CLASS members in individually
13 controlling the prosecution or defense of separate actions;

14 (ii) The extent and nature of any litigation concerning the controversy already
15 commenced by or against members of the CALIFORNIA CLASS;

16 (iii) In the context of wage litigation because as a practical matter a substantial
17 number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear
18 of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS
19 or with a subsequent employer, the Class Action is the only means to assert their claims through a
20 representative;

21 (iv) The desirability or undesirability of concentration the litigation of the
22 claims in the particular forum;

23 (v) The difficulties likely to be encountered in the management of a Class
24 Action; and,

25 (vi) The basis of DEFENDANTS' policies and practices applied to all the
26 CALIFORNIA CLASS members.

27 46. The Court should permit this Action to be maintained as a Class Action pursuant to Cal.
28 Code of Civ. Proc. § 382 because:

1 (a) The questions of law and fact common to the CALIFORNIA CLASS
2 predominate over any question affecting only individual members;

3 (b) A Class Action is superior to any other available method for the fair and efficient
4 adjudication of the claims of the members of the CALIFORNIA CLASS;

5 (c) The CALIFORNIA CLASS members are so numerous that it is impractical to
6 bring all CALIFORNIA CLASS members before the Court;

7 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able to obtain
8 effective and economic legal redress unless the action is maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and equitable
10 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
11 adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon
12 the CALIFORNIA CLASS;

13 (f) There is a community of interest in ensuring that the combined assets and
14 available insurance of DEFENDANTS are sufficient to adequately compensate the CALIFORNIA
15 CLASS members for any injuries sustained;

16 (g) DEFENDANTS has acted or has refused to act on grounds generally applicable
17 to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
18 CLASS as a whole;

19 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
20 business records of DEFENDANTS; and,

21 (i) Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
23 DEFENDANTS' conduct as to the CALIFORNIA CLASS Members.

24 47. DEFENDANTS maintain records from which the Court can ascertain and identify by
25 name and job title, each of DEFENDANTS' employees who have been intentionally subjected to
26 DEFENDANTS' corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek
27 leave to amend the complaint to include any additional job titles of similarly situated employees when
28 they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

48. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by defendants RUSH MEDIA and/or XLT in California (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to the filing of the Complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

49. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in violation of the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission (“IWC”) Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title alone and without regard to the actual overall requirements of the job, systematically classified PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS as independent contractors in order to avoid the payment of all wages, and in order to avoid the obligations under the applicable California Labor Code provisions. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

50. DEFENDANTS maintain records from which the Court can ascertain and identify by job title each of DEFENDANTS’ employees who as CALIFORNIA LABOR SUB-CLASS Members have been systematically, intentionally and uniformly misclassified as independent contractors as a matter of DEFENDANTS’ corporate policy, practices and procedures. PLAINTIFF will seek leave to amend the complaint to include these additional job titles when they have been identified.

51. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

52. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

(a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and

1 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
2 correct minimum wages for which DEFENDANTS is liable;

3 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing
4 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
5 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
6 DEFENDANTS is liable pursuant to Cal. Lab. Code § 1194;

7 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
8 and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty,
9 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

10 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
11 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
12 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
13 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
14 of time worked at each hourly rate by the employee;

15 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
16 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of
17 their job duties; and,

18 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
19 employee is discharged or quits from employment, the employer must pay the employee all wages due
20 without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner
21 required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have
22 terminated their employment.

23 53. This Class Action meets the statutory prerequisites for the maintenance of a Class
24 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

25 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
26 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and
27 the disposition of their claims as a class will benefit the parties and the Court;

28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that

are raised in this Complaint are common to the CALIFORNIA LABOR 19 SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was thus denied minimum wage pay and meal and rest breaks, among other things, as a result of DEFENDANTS' systematic classification practices. PLAINTIFF and all other members of the CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANTS' violations of the laws of California; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

54. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUBCLASS will create the risk of: 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or, 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in

1 that the DEFENDANTS uniformly classified and treated the members of the CALIFORNIA LABOR
2 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
3 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as
4 independent contractors, and thereby denied these employees the protections afforded to them under
5 the California Labor Code;

6 (c) Common questions of law and fact predominate as to the members of the
7 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California law as
8 listed above, and predominate over any question affecting only individual CALIFORNIA LABOR
9 SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and
10 efficient adjudication of the controversy, including consideration of:

11 i) The interests of the members of the CALIFORNIA LABOR SUB-
12 CLASS in individually controlling the prosecution or defense of separate actions in that the substantial
13 expense of individual actions will be avoided to recover the relatively small amount of economic losses
14 sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the
15 substantial expense and burden of individual prosecution of this litigation;

16 ii) Class certification will obviate the need for unduly duplicative litigation
17 that would create the risk of:

18 A. Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
20 of conduct for the DEFENDANTS; and/or,

21 B. Adjudications with respect to individual members of the
22 CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the
23 other members not parties to the adjudication or substantially impair or impede their ability to protect
24 their interests;

25 iii) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of
27 fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with
28 DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their

1 claims through a representative; and,

2 iv) A class action is superior to other available methods for the fair and
3 efficient adjudication of this litigation because class treatment will obviate the need for unduly and
4 unnecessary duplicative litigation that is likely to result in the absence of certification of this action
5 pursuant to Cal. Code of Civ. Proc. § 382.

6 55. This Court should permit this action to be maintained as a Class Action pursuant to Cal.
7 Code of Civ. Proc. § 382 because:

8 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
9 CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS
10 Members;

11 b) A Class Action is superior to any other available method for the fair and efficient
12 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
13 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
14 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
15 impact on their employment;

16 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
17 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

18 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,
19 will not be able to obtain effective and economic legal redress unless the action is maintained as a Class
20 Action;

21 (e) There is a community of interest in obtaining appropriate legal and equitable
22 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
23 adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted
24 upon the CALIFORNIA LABOR SUB-CLASS;

25 (f) There is a community of interest in ensuring that the combined assets of
26 DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR
27 SUB-CLASS for the injuries sustained;

28 (g) DEFENDANTS has acted or refused to act on grounds generally applicable to

the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

(h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

JURISDICTION AND VENUE

56. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Action is brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated employees of DEFENDANTS pursuant to Cal. Code of Civ. Proc. Section 382.

57. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5, because DEFENDANTS (i) currently maintains and at all relevant times maintained its principal offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful, Unfair and Deceptive Business Practices

[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANTS)

58. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

59. DEFENDANTS is a "person" as that term is defined under Cal. Bus. & Prof. Code § 17021.

60. Section 17200 of the California Business & Professions Code defines unfair competition as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other

equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may take such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, 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.

California Business & Professions Code § 17203.

61. By the conduct alleged herein, DEFENDANTS has engaged and continues to engage in a business practice which violates California law, including but not limited to the applicable Industrial Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which this Court should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the payment of the employer's share of income taxes, social security taxes, unemployment insurance and workers' compensation insurance.

62. By the conduct alleged herein DEFENDANTS has obtained valuable property, money, and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete. Declaratory and injunctive relief is necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would not afford adequate and complete relief.

63. All the acts described herein as violations of, among other things, the California Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive, and unscrupulous,

1 and were likely to deceive employees, and thereby constitute deceptive, unfair and unlawful business
2 practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

3 64. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent
4 in that DEFENDANTS' policy and practice was to represent to the CALIFORNIA CLASS Members
5 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
6 insurance and other benefits as required by California law, when in fact these representations were false
7 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
8 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

9 65. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
10 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members
11 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

12 66. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
13 do, seek such relief as may be necessary to restore to them the money and property which
14 DEFENDANTS has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
15 CLASS have been deprived, by means of the above described unlawful and unfair business practices,
16 including earned but unpaid wages for all time worked.

17 67. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
18 and do, seek a declaration that the described business practices were unlawful, unfair and deceptive,
19 and that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful
20 and unfair business practices in the future.

21 68. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
22 deceptive in that DEFENDANTS' policies, practices and procedures failed to provide all legally
23 required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as
24 required by Cal. Lab. Code §§ 226.7 and 512.

25 69. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
27 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period
28 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday

1 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

2 70. PLAINTIFF further demands on behalf of himself and each member of the
3 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not timely
4 provided as required by law.

5 71. By and through the unlawful and unfair business practices described herein,
6 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
7 members of the CALIFORNIA CLASS, including earned wages for all time worked and has deprived
8 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
9 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete
10 against competitors who comply with the law.

11 72. All the acts described herein as violations of, among other things, the Industrial Welfare
12 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, are
13 unlawful and in violation of public policy, are immoral, unethical, oppressive and unscrupulous, are
14 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
15 Bus. & Prof. Code §§ 17200 *et seq.*

16 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
17 do, seek such relief as may be necessary to restore to them the money and property which
18 DEFENDANTS has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
19 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

20 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
21 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
22 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
23 unfair business practices in the future.

24 75. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
25 and/or adequate remedy at law that will end the unlawful and unfair business practices of
26 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
27 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
28 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic

1 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
2 business practices.

3 **SECOND CAUSE OF ACTION**

4 **For Failure to Pay Minimum Wages**

5 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

6 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)**

7 76. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
8 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
9 Complaint.

10 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
11 a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the
12 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate and
13 pay minimum wages to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members.

14 78. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
15 policy, an employer must timely pay its employees for all hours worked.

16 79. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
17 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
18 minimum so fixed is unlawful.

19 80. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
20 including minimum wage compensation and interest thereon, together with the costs of suit.

21 81. DEFENDANTS maintained a wage practice of paying PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time
23 they worked. As set forth herein, DEFENDANTS' policy and practice was to unlawfully and
24 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS.

26 82. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
28 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

2 83. In committing these violations of the California Labor Code, DEFENDANTS
3 inaccurately calculate the correct time worked and consequently underpays the actual time worked by
4 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted
5 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
6 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
7 regulations.

8 84. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
10 correct minimum wage compensation for their time worked for DEFENDANTS.

11 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were
13 entitled to, constituting a failure to pay all earned wages.

14 86. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
15 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time
16 they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have
17 suffered and will continue to suffer an economic injury in amounts which are presently unknown to
18 them and which will be ascertained according to proof at trial.

19 87. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
20 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
21 DEFENDANTS elected, either through intentional malfeasance or gross nonfeasance, to not pay
22 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
23 DEFENDANTS perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

25 88. In performing the acts and practices herein alleged in violation of California labor laws,
26 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
27 worked and provide them with the requisite compensation, DEFENDANTS acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or
2 the consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of these
4 employees.

5 89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
7 the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
8 California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is
9 determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated
10 their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore
11 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
12 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
13 DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further,
14 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
15 statutory costs.

16 **THIRD CAUSE OF ACTION**

17 **For Failure to Pay Overtime Wages**

18 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)**

20 90. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

22 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANTS failed to
23 pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time
24 they worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510
25 & 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were
26 regularly required to work, and did in fact work, overtime that DEFENDANTS never recorded as
27 evidenced by DEFENDANTS' business records and witnessed by DEFENDANTS' employees.

28 92. By virtue of DEFENDANTS' unlawful failure to pay compensation to PLAINTIFF and

1 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
3 economic in amounts which are presently unknown to them and which can be ascertained according to
4 proof at trial.

5 93. DEFENDANTS knew or should have known that PLAINTIFF and the CALIFORNIA
6 CLASS Members were misclassified as independent contractors and DEFENDANTS elected, either
7 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
8 corporate policy, practice and procedure.

9 94. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
10 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
11 statutory penalties against DEFENDANTS in a sum as provided by the California Labor Code and/or
12 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
13 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
14 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
15 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and
16 recover statutory costs.

17 95. In performing the acts and practices herein alleged in violation of California labor laws,
18 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
19 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
20 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their
22 legal rights, or the consequences to them, and with the despicable intent of depriving them of their
23 property and legal rights, and otherwise causing them injury in order to increase corporate profits at the
24 expense of these employees.

25 **FOURTH CAUSE OF ACTION**

26 **For Failure to Provide Required Meal Periods**

27 **[Cal. Lab. Code §§ 226.7 & 512]**

28 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**

DEFENDANTS)

96. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

97. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

98. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

99. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)

100. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

101. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUBCLASS Members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

102. 88. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

103. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)

104. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior of this Complaint.

105. California Labor Code Section 226 requires an employer to furnish its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (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 the employee's 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.

106. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANTS issued inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (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 the employee's 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.

107. As a result, DEFENDANTS issued PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

108. DEFENDANTS knowingly and intentionally failed to comply with Labor Code § 226,

causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the true amount of time worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)

109. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

110. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

111. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. Specifically, DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, the cost associated with the use of their personal cellular phones and personal vehicles for DEFENDANTS' benefit. In order to work for DEFENDANTS, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required

to use their personal vehicles to travel and to use DEFENDANTS' mobile application and as such it is mandatory to have a cell phone that is compatible with DEFENDANTS' mobile application. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which included, but were not limited to, the costs related to the use of their personal cellular phones and personal vehicles all on behalf of and for the benefit of DEFENDANTS. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not reimbursed or indemnified by DEFENDANTS for the cost associated with using their personal vehicles while driving for DEFENDANTS. Moreover, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also required from time to time to pay for parking costs at certain places. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which included, but were not limited to, costs related to travel all on behalf of and for the benefit of DEFENDANTS. These expenses are necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

112. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202 and 203]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANTS)

113. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

2 114. Cal. Lab. Code § 200 states that:

3 As used in this article:

4 (a) "Wages" includes all amounts for labor performed by
5 employees of every description, whether the amount is fixed or ascertained
6 by the standard of time, task, piece, Commission basis, or other method of
7 calculation.

8 (b) "Labor" includes labor, work, or service whether rendered or
9 performed under contract, subcontract, partnership, station plan, or other
10 agreement if the labor to be paid for is performed personally by the person
11 demanding payment.

12 115. Cal. Lab. Code § 201 states, in relevant part, that "If an employer discharges an
13 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

14 116. Cal. Lab. Code § 202 states, in relevant part, that:

15 If an employee not having a written contract for a definite period quits his
16 or her employment, his or her wages shall become due and payable not later
17 than 72 hours thereafter, unless the employee has given 72 hours previous
18 notice of his or her intention to quit, in which case the employee is entitled
19 to his or her wages at the time of quitting. Notwithstanding any other
20 provision of law, an employee who quits without providing a 72-hour notice
21 shall be entitled to receive payment by mail if he or she so requests and
22 designates a mailing address. The date of the mailing shall constitute the
23 date of payment for purposes of the requirement to provide payment
24 within 72 hours of the notice of quitting.

25 117. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR SUB-
26 CLASS Members' employment contract.

27 118. Cal. Lab. Code § 203 states:

28 If an employer willfully fails to pay, without abatement or reduction, in

accordance with Sections 201, 201.5, 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.

119. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS Members has terminated, yet as to those individuals whose employment terminated, DEFENDANTS did not timely tender payment of all wages owed as required by law.

120. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as allowed.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANTS to pay minimum and overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) Compensatory damages, according to proof at trial, including compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) The wages of all terminated individuals in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

E) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and the applicable IWC Wage Order;

F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

3. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or §2802.

Dated: August 20, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on all issues triable to a jury.

Dated: August 20, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

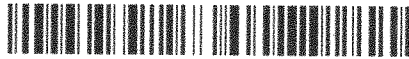
By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rush Media Company LLC
 C/O Tim Eichorst
 503 Moravian Valley Road
 Waukegan, WI 53597



9590 9402 5466 9249 9960 01

2. Article Number (Transfer from service label)

7019 2280 0002 0097 7718

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X CV-19 MF

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

8/28

 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

Jacobs 8.24.20

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

 Mail
 Mail Restricted Delivery
 00

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

XLT Management Services, Inc.
 C/O CT Corp Systems
 818 West Seventh Street, Suite 930
 Los Angeles, CA 90017



9590 9402 5466 9249 9960 18

2.

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [Signature]

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

Jacobs 8.24.20

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

EXHIBIT 4

Tesla Stone

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Friday, January 15, 2021 1:43 PM
To: Leilani Edmonds
Subject: Thank you for your Court Complaint Submission.

01/15/2021 01:42:40 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 5