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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DAVID MARTINELLO, on behalf of himself,
and others similarly situated,

Plaintiff,

v.

CENTURY WILSHIRE, INC., a California
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No: 20STCV32613

**DECLARATION OF SHANI O.
ZAKAY, ESQ. IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: October 26, 2021
Hearing Time: 10:30 AM

Honorable Carolyn Kuhl
Department 12

Trial Date: Not Set
Action Filed: August 24, 2020

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

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

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

17 A. Fairness of Settlement

18 3. As consideration for this Settlement, the total amount to be paid by Defendant is
19 Three Hundred Twenty-Five Thousand Dollars and Zero Cents (\$325,000) (the “Total Settlement
20 Amount”). (Agreement at ¶ III(A)(1)). The Total Settlement Amount will settle all issues pending
21 in this litigation between the Plaintiff and the California Class (the “Class”), on the one hand, and
22 the Defendant and the Released Parties, on the other hand, including: payment of all Individual
23 Settlement Payments, the Class Representative Service Payment Awards, the Class Counsel Award,
24 Class Counsel Litigation Expenses Payment, the payment to the Aggrieved Employees and the
25 California Labor Workforce Development Agency (“PAGA Payment”), and the expenses of the
26 Settlement Administrator. (*Id.*). The Total Settlement Amount does not include Defendant’s share
27 of employer payroll taxes, which it shall pay separately. (*Id.*) The Settlement is all-in with no
28 reversion to Defendant and no need to submit a claim form. (*Id.*).

1 4. The relief provided in the Settlement will benefit all members of the Class who do
2 not opt out. The Settlement does not improperly grant preferential treatment to the Plaintiff or
3 segments of the Class in any way. Each Participating Class Member will be entitled to a payment
4 based on the plan of allocation described herein. Each Participating Class Member's Individual
5 Settlement Payment will be determined based upon the weeks worked by that employee during the
6 prescribed Class Period.

7 5. On April 27, 2021, the Parties attended an arm's-length private mediation before
8 Tripper Ortman, Esq., a respected mediator of wage and hour class and representative actions. In
9 preparation for the mediation, Defendant provided Class Counsel with necessary records and
10 information for the members of the Class, including the total workers, workweeks and pay periods
11 during the relevant time. Defendant produced a significant sample consisting of pay records and
12 time records. Defendant also produced Defendant's relevant employment policies, including
13 compensation policies and timekeeping policies. Plaintiff analyzed the data with the help of an
14 expert, the Berger Consulting Group ("Berger"). At the conclusion of the mediation, the Parties
15 were able to reach an agreement to settle the Action based on Mr. Ortman's informed mediator's
16 proposal. The basic terms were set forth in a signed Memorandum of Understanding. The Parties
17 then prepared the full Agreement, which was signed by all counsel and the Parties. Plaintiff and
18 his Counsel believe that this Settlement is fair, reasonable, and adequate.

19 6. The amounts to compensate the Class Members for the alleged violations at the time
20 this Settlement was negotiated were calculated by Berger Consulting Group ("Berger"), Plaintiff's
21 damage expert. Plaintiff used Berger to analyze the data and determine the potential damages for
22 the employees. For the Class, Plaintiff estimates that Defendant was subject to maximum liability
23 for damages in the amount of \$1,996,949, consisting of \$359,354 for unpaid wages, including
24 unpaid gratuities, and \$1,637,595 for non-compliant meal and rest break periods. In addition,
25 Plaintiff calculated that Defendant could be liable for \$1,201,151, for waiting time penalties and
26 \$256,300 for wage statement penalties. Finally, Plaintiff's expert calculated that Defendant could
27 be liable for PAGA penalties in an amount of \$3,219,800. Consequently, the Settlement of
28 approximately \$325,000 represents almost 16.3% of the value of the maximum actual damages at

1 issue. Furthermore, the Settlement represents almost 9.4% of the maximum combination of
2 damages and penalties to the Class, assuming all of these amounts could be proved at trial. Given
3 the amount of the Settlement as compared to the potential value of claims in this case, the Settlement
4 is fair and reasonable. Clearly, the goal of this litigation to provide compensation to Class Members
5 for unpaid time, for allegedly missed meal and rest breaks, and unreimbursed expenses has been
6 met.

7 B. Procedural History of the Litigation

8 7. On June 11, 2020, Plaintiff filed a Notice of Violations with the LWDA and served
9 the same on Defendant. The Notice to the LWDA included a proposed Complaint which Plaintiff
10 planned on filing with the Court, which asserted the Defendant: (1) Violated California Business
11 and Professions Code § 17200 et seq.; (2) Failed to pay minimum wages in violation of California
12 Labor Code §§ 1194, 1197, and 1997.1; (3) Failed to pay overtime wages in violation of California
13 Labor Code §§ 510, et seq.; (4) Failed to provide meal periods in violation of California Labor Code
14 §§ 226.7 & 512, and IWC Wage Order; (5) Failed to provide rest periods in violation of California
15 Labor Code §§ 226.7 & 512, and IWC Wage Order; (6) Failed to provide accurate and complete
16 itemized wage statements in violation of California Labor Code §226; (7) Failed to provide wages
17 when due in violation of California Labor Code §§ 201, 202, and 203; (8) Failed to reimburse
18 employees for required expenses in violation of California Labor Code §2802; and (9) Failed to
19 provide gratuities in violation of California Labor Code §351. On August 24, 2020, Plaintiff filed
20 a class action and PAGA Complaint against Defendant in the Superior Court of the State of
21 California, County of Los Angeles. In addition to the causes of action asserted in the Notice to the
22 LWDA, Plaintiff's complaint included a tenth cause of action for Defendant's violation of the
23 Private Attorneys General Act in violation of California Labor Code §2698.

24 8. Plaintiff sought to represent a putative class of all individuals who worked for
25 Defendant as non-exempt employees in California during the California Class Period (the
26 "California Class"). The Class Period is defined as the period between April 6, 2016, and July 27,
27 2021. The Action seeks unpaid wages, unpaid gratuities, penalties, attorneys' fees and costs, and
28

1 any other equitable or legal relief allegedly due and owing to Plaintiff and other Class Members
2 and aggrieved employees by virtue of the foregoing claims.

3 9. Prior to mediation, the Parties engaged in investigation and the exchange of
4 documents and information in connection with the Action. As part of this process, Defendant
5 provided a significant sample of time records and payroll records, as well as other documents and
6 information, including Plaintiff's complete personnel, time and pay records during the relevant
7 time, relevant data points pertaining to the number of workers, workweeks, and pay periods, and
8 applicable employment policies and procedures in effect during the relevant time, to Class Counsel
9 to review and analyze. On April 27, 2021, the Parties participated in a full-day mediation presided
10 over by Tripper Ortman, Esq., a respected mediator of wage and hour class and representative
11 actions. The Parties were able to reach an agreement to settle the Action at the conclusion of the
12 mediation pursuant to a mediator's proposal. The Parties documented the agreement in the form of
13 a Memorandum of Understanding. The Parties then prepared the Joint Stipulation of Settlement of
14 Class Action Claims and Release of Claims ("Agreement"), which was signed by the Parties and is
15 now presented to this Court for preliminary approval.

16 10. Although a resolution has been reached, Defendant denies any and all liability or
17 wrongdoing of any kind associated with the claims alleged in the Action as to Plaintiff or any Class
18 Members and/or Aggrieved Employees and further denies that, for any purpose other than
19 Settlement, the Action is appropriate for class or representative treatment. Defendant contends,
20 among other things, that it has correctly and fully compensated Plaintiff, the Class Members and
21 Aggrieved Employees for all wages and gratuities, provided compliant meal and rest periods to the
22 Class Members, provided complete and accurate itemized wage statements, provided
23 reimbursement of all reasonable and necessary business expenses in accordance with the law, and
24 complied at all times with the California Labor Code, and the applicable Wage Orders. "The Parties
25 agree to certification of the Class for purposes of this Settlement only." (Agreement at ¶ II(D)).

26 11. Class Counsel has conducted a thorough investigation into the facts of the class
27 action. Class Counsel has diligently evaluated the Class Members' claims against Defendant. Class
28 Counsel reviewed the production of documents from the Defendant. Prior to mediation, counsel

1 for Defendant provided Class Counsel with access to the necessary data and information for Class
2 Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review of a
3 significant sample of time and pay records and data with the assistance of an expert. Based on the
4 foregoing data and their own independent investigation, evaluation, and experience, Class Counsel
5 believes that the terms of the Settlement set forth in the Agreement are fair, reasonable, and adequate
6 and are in the best interest of the Class in light of all known facts and circumstances, including the
7 risk of significant delay, the defenses asserted by Defendant, and potential appellate issues.

8 C. Settlement Terms and Plan of Allocation

9 12. The Total Settlement Amount to be paid by Defendant is Three Hundred Twenty-
10 Five Thousand Dollars (\$325,000.00). Under the Settlement, the Total Settlement Amount consists
11 of the following elements: (1) Individual Settlement Payments to Participating Class Members, (2)
12 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, (3) Settlement
13 Administration Costs, the PAGA Payment, and the Class Representative Service Award to the
14 Plaintiff. The Total Settlement Amount does not include Defendant's share of employer payroll
15 taxes, which Defendant shall pay to the Administrator separately. The Total Settlement Amount
16 shall be all-in with no reversion to Defendant.

17 13. After the Effective Date of the Agreement, the Defendant will fund the Total
18 Settlement Amount. The Settlement Administrator will establish and administer this settlement, and
19 shall pay from the Total Settlement Amount: the Participating Class Members their Individual
20 Settlement Payments from the Net Settlement Amount; Class Counsel their Class Counsel Fees
21 Payment and the Class Counsel Litigation Expenses Payment; the Aggrieved Employees their
22 portion of the PAGA Payment; the LWDA its portion of the PAGA Payment; and the Settlement
23 Administrator its Settlement Administration Costs, all in the amounts approved by the Court.
24 (Agreement at ¶ I(L))

25 14. The Net Settlement Amount shall equal the net amount available for Settlement
26 shares to Participating Class Members from the Total Settlement Amount after deducting the Court-
27 approved amounts for the Class Award, Class Representative Service Award, PAGA Settlement,
28 and Settlement Administration Costs. The Settlement Administrator will pay the Individual

1 Settlement Payments to the Class Members. (Agreement at ¶ III(K)). The Settlement Administrator
2 will pay an Individual Settlement Payment from the Net Settlement Amount. (Agreement at ¶ I(N)).
3 The Individual Settlement Payments will be calculated based on the number of workweeks worked
4 during the Class Period. (Agreement at ¶ III(M)(1)(a)). The Settlement Share for each Participating
5 Class Member will be calculated as follows: (1) from the Net Settlement Amount the Settlement
6 Share for each Participating Class Member will be calculated by (a) dividing the workweeks for
7 each Settlement Class Member by the total number of workweeks to determine a payment ratio
8 (“Payment Ratio”), and (b) multiplying the Payment Ratio by the Net Settlement Amount to
9 determine the estimated Individual Settlement Payment. (Agreement at ¶ III (M)(1)(a)). The entire
10 Net Settlement Fund shall be distributed.

11 15. Class Members will have forty-five (45) days after the mailing of the Class Notice
12 to exclude themselves or submit written objections. (Agreement at ¶ I(BB)). Class Members may
13 choose to exclude themselves and opt-out of the Settlement by following the directions set forth in
14 the Class Notice. (Agreement at ¶ III(L)(7)). All Class Members who do not “opt-out” will be
15 deemed Settlement Class Members who will be bound by the Settlement and will be entitled to
16 receive an Individual Settlement Payment. (Agreement at ¶ I(GG)). Finally, the Class Notice will
17 advise the Class Members of their right to object to the Settlement. (Agreement at ¶ III(L)(8))

18 16. If a check is returned to the Settlement Administrator, the Settlement Administrator
19 shall re-mail the check to any forwarding address provided by the Class Member. (Agreement at ¶
20 III(L)(4)). If no forwarding address is provided, the Settlement Administrator will use reasonable
21 efforts to attempt to determine a correct address. (*Id.*). If a Participating Class Member does not
22 cash their Individual Settlement Payment within ninety (90) days after the Settlement
23 Administrator’s last mailing to the Participating Class Member, the Settlement Administrator will
24 send the affected Participating Class Member a notice informing him or her that unless the check is
25 cashed in the next ninety (90) days, the check will expire and become non-negotiable, and offer to
26 replace the check if it was lost or misplaced but not cashed. (Agreement at ¶ III(M)(1)(f)). If a
27 Class Member’s Individual Settlement Payment check is not cashed within one hundred eighty
28 (180) days after its mailing to the Class Member, the funds from such uncashed check will be paid

1 to the Children’s Advocacy Institute (“CAI”) in accordance with California Code of Civil Procedure
2 section 384 in the name of the Class Member and the Class Member will remain bound by the
3 Settlement. (*Id.*). None of the Parties or counsel has any interest, pecuniary or otherwise, in CAI.

4 17. The Parties have agreed to use ILYM Group as the Settlement Administrator for the
5 Settlement. (Agreement at ¶ I(DD)). Payment of the expenses of the Settlement Administrator
6 from the Total Settlement Administrator shall be made for the expenses of effectuating and
7 administering the Settlement. ILYM Group shall receive payment for services in an amount not to
8 exceed \$15,000. (Agreement at ¶ III(M)(5)).

9 18. Subject to Court approval, the Agreement provides for Class Counsel to be awarded
10 a sum not to exceed one-third of the Total Settlement Amount currently estimated to be
11 \$108,333.00, as their Class Counsel Fees Payment. (Agreement at ¶ III(M)(3)). Class Counsel’s
12 award for attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law Firm,
13 APC and 50% to Zakay Law Group, ALPC). (Agreement at ¶ I(E)). Class Counsel will also be
14 allowed to apply separately for an award of litigation expenses incurred in the prosecution and
15 settlement of the Action currently not exceeding \$20,000. (*Id.*). In support of this request, Class
16 Counsel will provide evidentiary support, including lodestar.

17 19. Subject to Court approval, the Agreement provides for the payment of a Class
18 Representative Service Payment of no more than \$7,500 for Plaintiff, or any lesser amount as may
19 be approved by the Court. (Agreement at ¶ III(M)(2)).

20 20. Subject to Court approval, \$15,000 will be allocated from the Total Settlement
21 Amount for settlement of civil penalties under PAGA. (Agreement at ¶ III(M)(4)). Pursuant to the
22 requirements of Labor Code §2699(i) the PAGA Payment shall be allocated \$11,250 (75%) to the
23 LWDA (the “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties and
24 \$3,750 (25%) will be distributed to the Aggrieved Employees (the “Aggrieved Employee
25 Payment”). (*Id.*).

26 D. Risks of Continued Litigation and Standards for Approval

27 21. Plaintiff and Class Counsel recognize the expense and delay of continuing to litigate
28 and trying the Action against Defendant through possible appeals, which could take several years,

1 particularly in light of the ongoing pandemic and its impact on the courts and litigants, generally.
2 Class Counsel have also considered the uncertain outcome and risk of litigation, especially in
3 complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent
4 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
5 their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the
6 Agreement is in the best interest of the Class Members.

7 22. Here, several defenses asserted by Defendant presented serious threats to the claims
8 of the Plaintiff and the other Class Members. Defendant asserted that the employment practices
9 complied with all applicable Labor Laws.

10 23. First, Defendant strongly argued that Plaintiff and the Class Members did not forfeit
11 any gratuities because service charge is a separately designated amount collected by a hotel from
12 patrons that is part of the amount due the hotel for services rendered, rather than something “over
13 and above the actual amount due.” (See LAMC, § 184.01, subd. F.) Thus, a service charge by
14 definition is not a gratuity. Defendant contends that the Legislature has made clear that amounts
15 due for services (which include service charges) are not gratuities, which is evidenced by recent
16 amendments to the definition of gratuity carving out an exception for dancing services. (§ 350, subd.
17 (e).)” (See *Garcia v. Four Points Sheraton LAX*, 188 Cal. App. 4th 364, 377 (2010).) Defendant
18 therefore argued that the portion of the service charge, which was added to the banquet bills but
19 allegedly not paid to employees in the chain of service, constituted only a charge for the actual
20 amount due for managerial and planning services of the banquet, and not any sum over and above
21 the actual amount due for food and drink sold to its patrons. Defendant further argued that it
22 specifically suggested to its banquet customers to pay gratuities separately and additionally to the
23 service staff, and that its customers regularly paid such additional gratuities. Defendant argued,
24 therefore, that California Labor Code § 351 did not apply to Plaintiff and the Class Members. This
25 defense could substantially reduce any recovery to the class. While Plaintiff believes that this
26 defense, and others, could be overcome, Defendant maintains these defenses have merit and
27 therefore present a serious risk to recovery for the Class.

1 24. Second, Defendant argued that the Supreme Court decision in *Brinker v. Superior*
2 *Court*, 53 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value,
3 and class certifiability as to the meal and rest period claims. A major component of the damages
4 alleged to have been suffered by the Class Members are attributed to missed meal and rest breaks.
5 Before and during the mediation, Defendant aggressively argued that Defendant's policies and
6 culture afforded the Class Members an opportunity to take timely meal and rest breaks, and that if
7 non-compliant breaks occurred, employees like the Plaintiff *voluntarily chose* not to take compliant
8 breaks notwithstanding the fact that Defendant afforded all employees the full opportunity to take
9 compliant, uninterrupted meal and rest periods. Defendant argued, therefore, that under the *Brinker*
10 decision it has no liability for the missed breaks whatsoever. Defendant argued further that it
11 adopted and strictly enforced lawful policies, afforded Plaintiff and the Class Members compliant
12 meal and rest breaks, and had a system in place to pay premiums when breaks were missed, short
13 or untimely, regardless of the reason. Finally, Defendant argued that certain of the Class Members
14 executed meal period waivers and provided evidence of voluntarily waived meal periods, as
15 permitted by California law, which would require a unique and individualized assessment of each
16 and every employee. Plaintiff and Class Counsel appreciate that the court may find
17 remitter/reduction of the statutory damages appropriate. See e.g. *Klingensmith v. Max & Erma's*
18 *Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505, at *5 (E.D. Pa. 2007). If
19 successful, these defenses could eliminate or substantially reduce any recovery to the Class. While
20 Plaintiff believes that these defenses, and others, could be overcome, Defendant maintains these
21 defenses have merit and therefore present a serious risk to recovery for the Class.

22 25. Third, regarding reimbursement claims, Defendant argued *inter alia* that neither
23 Plaintiff nor any Class Member was required to use a personal device for work. Defendant has
24 available telephone and walkie-talkies/radios on-site for employees to carryout their work duties.
25 Defendant maintains and enforces a strict policy prohibiting employees from carrying their mobile
26 devices on them while on-the-clock. Moreover, for any management level personnel who elected
27 to use their personal devices, Defendant required them to execute a "Bring Your Own Device
28 Policy" and provided a monthly stipend to account for business use of such approved devices.

1 26. Finally, Defendant argued that most clothing worn by hotel employees does not
2 qualify as a “uniform” under California law. *See Bright v. Dennis Garberg & Assocs.* (C.D. Cal.
3 May 4, 2011) 2011 WL 13147441, at *3–6 (basic articles of clothing —such as a white shirt and
4 black pants—arguably do not fall within the definition of “uniform” as used in the Wage Orders).
5 Basic wash and wear does not have to be reimbursed by the employers, only if something more than
6 “minimal care” is required does the employer have a duty to reimburse. *See Myles v. Securitas*
7 *Critical Infrastructure Servs., Inc.* (Cal. Ct. App. Nov. 29, 2018) 2018 WL 6241488, at *4–7
8 (“whether a Securitas employee must be compensated for maintaining a uniform depends on
9 whether it is ‘wash and wear’ or requires special treatment.”); *O'Connor v. Starbucks Corp.* (2008)
10 2008 WL 2761586 *5 (California law states employers owe duty to maintain uniform if it requires
11 special laundering or care).

12 27. There was also a significant risk that, if the Action was not settled, Plaintiff would
13 be unable to obtain class certification and thereby not recover on behalf of any employee other than
14 himself. Defendant argued that the individual experience of each employee varied with respect to
15 the alleged claims, including based on the Class Members’ job position, schedule, department and
16 reporting structure, among other variables. While other cases have approved class certification of
17 wage and hour claims, class certification in this action would have been hotly disputed and was by
18 no means a foregone conclusion. Finally, even if class certification was successful, as demonstrated
19 by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1
20 (2014), there are significant hurdles to overcome for a class-wide recovery.

21 28. This Settlement is therefore entitled to preliminary approval. Assuming
22 certification, were this case to go to trial, the Plaintiff and other Class Members would need to prove
23 to the satisfaction of the Court, among other things, that wages, premiums, reimbursements and
24 other damages were owed on a class-wide basis. This was and is a substantial risk, and the Parties,
25 after arm’s-length negotiations between experienced and informed counsel, recognized the potential
26 risks and agreed on the settlement.

27 29. Plaintiff will apply to the Court for the Class Representative Service Award of not
28 more than \$7,500 in consideration for his service, and for the risks undertaken on behalf of the

1 Class. (Agreement at ¶ III(M)(2)). Plaintiff performed his duties admirably by working with Class
2 Counsel. The requested Plaintiff's service payment is well within the accepted range of awards for
3 purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist.
4 LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
5 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
6 (approving \$10,000 service award where class member recovery was \$375); *Rausch v. Hartford*
7 *Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award
8 of \$10,000 where class member recoveries were as little as \$150); *Louie v. Kaiser Foundation*
9 *Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service
10 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
11 *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
12 \$100,000.00 in enhancements). As explained in *Glass*, service awards are routinely awarded to
13 class representatives to compensate the employees for the time and effort expended on the case, for
14 the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an
15 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

16 30. The stage of the proceedings at which this Settlement was reached also militates in
17 favor of preliminary approval and ultimately, final approval of the settlement. Class Counsel has
18 conducted a thorough investigation into the facts of the class action. Class Counsel began
19 investigating the Class Members' claims before this action was filed. Class Counsel performed
20 significant review and analysis of Defendant's documents, including personnel records and
21 employment policies, time records, and pay records. Class Counsel engaged in a thorough research
22 and analysis of the relevant claims and data, including the number of workers, workweeks and pay
23 periods affected. Class Counsel were also experienced with the claims at issue here, as Class
24 Counsel previously litigated and settled similar claims in numerous other actions. Accordingly, the
25 Settlement did not occur until Class Counsel possessed sufficient information to make an informed
26 judgment regarding the likelihood of success on the merits and results that could be obtained
27 through further litigation.

1 31. Based on the foregoing data and their own independent investigation and evaluation,
2 Class Counsel is of the opinion that the settlement with Defendant for the terms set forth in the
3 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all
4 known facts and circumstances, including the risk of significant delay, defenses asserted by
5 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
6 Parties possessed sufficient information to make an informed judgment regarding the likelihood of
7 success on the merits and the results that could be obtained through further litigation.

8 E. Class Certification Issues

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

13 The California Class:

14 "all of Defendant's current and former non-exempt employees employed in California between
15 April 6, 2016 and the earlier of July 27, 2021 or the date of the preliminary approval of settlement."
16 (Agreement at ¶I(EE)).

17 The California Class Period is the period from April 6, 2016, to July 27, 2021. The Parties
18 estimate that there are 480 California Class Members who collectively worked approximately
19 21,179 workweeks.

- 20 a. **Numerosity** – Here, the approximately 480 current and former employees that
21 comprise the California Class can be identified based on Defendant's records
22 and are sufficiently numerous for class certification.
- 23 b. **Common Issues Predominate** - Here, Plaintiff contends that common questions
24 of law and fact are present, and specifically, whether Defendant's employment
25 practices were lawful, whether Defendant failed to pay gratuities, whether
26 Defendant failed to properly provide and/or pay for meal and rest periods,
27 whether Defendant paid for all time worked, whether Defendant provided
28 accurate wage statements, whether Defendant failed to pay all wages, whether

Defendant failed to pay business expense reimbursements to employees, and whether the Class is entitled to compensation and related penalties.

c. **Typicality** – In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. The Plaintiff, like every other member of the Class was employed by Defendant as a non-exempt employee and is a member of the Class. Plaintiff was subject to the same employment practices concerning the banquet service charges, time rounding, expense reimbursement and grooming requirements, meal and rest periods, and received similar wage statements. Thus, the claims of the Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve the same employment policies, and are based on the same legal theories.

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

33. Class Counsel are experienced in prosecuting class action lawsuits and can competently represent the Class. Attorneys from Class Counsel's firms have extensive class litigation experience, handling a number of class action and complex commercial cases and have acted both as counsel and as lead and co-lead counsel in a variety of these matters. Class Counsel have successfully prosecuted and obtained significant recoveries in numerous class action lawsuits and other lawsuits involving complex issues of law and fact. Class Counsel have collectively been

involved as class counsel in over two hundred class action matters, including many wage and hour class actions. Class Counsel has been found to be adequate counsel by the courts throughout California. A true and correct copy of the resume of Zakay Law Group, APC is attached hereto as Exhibit #2. Thus, the adequacy requirement is satisfied.

34. 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. 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. This notice program was designed to meaningfully reach the Class Members and advises 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 hearing; and the procedure and deadline for submitting comments, objections, requests for exclusion, and social distancing procedures for attendance at hearings and review of court files. The Class Notice complies with Rules of Court 3.766 and 3.769(f).

1 35. The Class Notice reflects the Court’s current social distancing procedures for
2 attendance at hearings and review of court files.

3 F. Additional Issues

4 36. **National Change of Address** – The Settlement Administrator is required to perform
5 a National Change of Address search on any Class Notice Packet returned by the U.S. Postal Service
6 as non-deliverable, and re-mail the Class Notice Packet to the Class Member’s new address under
7 the Settlement Agreement.

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

- 11 a. Significant sample data showing the employees, their employment dates, their
12 time sheets, hourly rates, and their wages.
- 13 b. Significant sample data concerning recorded meal periods.
- 14 c. Defendant’s Employee Handbook for the relevant time period, which outlined
15 the wage and hour policies of Defendant.
- 16 d. Employee file of Plaintiff.
- 17 e. Samples of wage statements provided by Defendant to employees.
- 18 f. Significant sample of payroll data.
- 19 g. Significant sample of time records.
- 20 h. Hiring and termination forms used by Defendant for employees, including forms
21 used to authorize background checks.

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

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

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

11 41. **Confidential Nature of Data Provided to the Administrator** – While the data
12 produced by Defendant to ILYM Group will be confidential, Class Counsel does not believe that
13 the confidentiality provisions would impede the performance of their fiduciary duties because Class
14 Counsel receives the necessary information, but with the names and addresses redacted in advance
15 of the mailing to show the settlement calculations, weekly reports concerning class member
16 correspondence, and a final report from Settlement Administrator, which is all that is usually
17 needed. Class Counsel will seek authorization from Defendant and/or relief from the Court should
18 an unanticipated or specific issue arise.

19 42. **Valuation of Damages**– For the Class, Plaintiff estimates that Defendant was
20 subject to maximum liability for damages in the amount of \$1,996,949, consisting of \$359,354 for
21 unpaid wages, including unpaid gratuities, and \$1,637,595 for non-compliant meal and rest break
22 periods. In addition, Plaintiff calculated that Defendant could be liable for \$1,201,151, for waiting
23 time penalties and \$256,300 for wage statement penalties. Finally, Plaintiff’s expert calculated
24 that Defendant could be liable for PAGA penalties in an amount of \$3,219,800. Consequently, the
25 Settlement of approximately \$325,000 represents almost 16.3% of the value of the maximum actual
26 damages at issue. Furthermore, the Settlement represents almost 9.4% of the maximum combination
27 of damages and penalties to the Class, assuming all of these amounts could be proved at trial. Given
28 the amount of the Settlement as compared to the potential value of claims in this case, the Settlement

1 is fair and reasonable. Clearly, the goal of this litigation to provide compensation to Class Members
2 for unpaid time and for allegedly missed rest breaks has been met.

3 **a. Unpaid Wages** - The allegation of unpaid minimum and overtime wages in this
4 case is based on a theory that Defendant engaged in unlawful rounding practices,
5 and required employees to work off the clock before and after their shifts.
6 According to the data received and assumptions made based on conversations with
7 the Plaintiff, the potential damages were estimated to be \$133,354.

8 **a. Meal and Rest Period Damages** – Meal and rest break premiums were calculated
9 as 1 hour of wages for each violation. Plaintiffs calculated the potential maximum
10 value of the meal and rest break damages to be \$2,112,660. The allegation of unpaid
11 meal break and rest break premiums in this case is based on a theory that Class
12 Members were unable to take a compliant break on a consistent basis, and that some
13 meal breaks were non-compliant due to Defendant’s rounding practices. Defendant
14 presented significant defenses to this claim, as discussed in detail above.

15 **b. Waiting Time and Wage Statement Penalties** – Waiting Time Penalties were
16 calculated by multiplying the Class Members’ average hourly rate by 8-hours, and
17 then again by 30-days. Plaintiff assumed a 100% violation rate for this claim.
18 Wage statement penalties were calculated pursuant to California Labor Code
19 Section 226(e) as \$50 per employee per pay period with a violation, subject to a
20 \$4,000 maximum penalty per employee. Plaintiff assumed a 100% violation rate
21 for this claim. The result was an estimated maximum waiting time penalty claim
22 in the amount of \$1,201,151, and a maximum wage statement penalty claim in the
23 amount of \$256,430. It is important to note that the California Court of Appeals
24 in *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018), recently held
25 that liability under Section 226 cannot be derivative. In other words, the court held
26 that Plaintiff cannot recover penalties under Section 226 based on Plaintiff’s
27 allegations that the Defendant violated other Labor Code sections that affected the
28 accuracy of the wage statements. Because Plaintiff’s Section 226 claim here is

partly based on Defendant's meal break and rest break violations, and Defendant's failure to include the meal and rest break premiums on the Class Members' wage statements, Plaintiffs' claim could be construed as derivate. It is possible that Plaintiff's claim would be subject to the *Maldonado* decision, resulting in a significant reduction in its value.

c. PAGA Penalties - PAGA penalty calculations are highly variable. Class Counsel is unaware of any PAGA judgment in which substantial PAGA penalties were awarded at the full statutory rate. Rather, PAGA judgments have typically decreased the amount of the per violation penalty to a fraction of the statutory amount. Without reducing or mitigating the PAGA penalties, Plaintiff calculated that the potential PAGA penalties at the maximum rate of \$4,219,800. These PAGA penalty amounts were duplicative and were likely not awardable at the maximum rate. In addition to the defenses presented by Defendant, as detailed above, there is another basis for concluding that the Settlement is reasonable even with PAGA penalties in this amount. Specifically, PAGA penalty claims are routinely settled at a small fraction of the potential penalties. For example, Judge Nelson in *Price v. Uber Technologies*, (Los Angeles Superior Court case no. BC554512), recently approved a PAGA settlement of \$7.75 million for 1.5 million drivers where the maximum PAGA liability was \$151 billion. Thus, the PAGA penalties were settled for 0.005% of the PAGA liability. Notably, this was the largest PAGA settlement in the 15-year history of PAGA. So, while PAGA penalty figures may be inflated to significant numbers, realistic settlements of PAGA claims result in a settlement amount of less than 1% of the PAGA liability.

d. Compliance with Labor Code §§2689. Plaintiff complied with all of the procedural requirements of Labor Code §§2689 as follows:

a. On June 11, 2020, Plaintiff gave written notice to the LWDA of his intent to assert a claim under PAGA and her alleged basis for the claim. (See

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Exhibit 3). At the time the notice to the LWDA was filed, Plaintiff also submitted the \$75 filing fee to the LWDA.

b. On September 4, 2020, a copy of the filed-stamped complaint was submitted to the LWDA. (See Exhibit 4).

c. On September 28, 2021, the LWDA has been provided notice of this motion and the PAGA settlement. (See Exhibit 5).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of September, 2021, at San Diego, California.

By:  _____
Shani O. Zakay

EXHIBIT 1

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

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DAVID MARTINELLO, an individual, on
behalf of himself and all persons similarly
situated,

Plaintiffs,

vs.

CENTURY WILSHIRE, INC., a California
corporation and DOES 1 through 50,
Inclusive,

Defendants.

Case No. 20STCV32613

[Action Filed 08/24/2020]

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

Judge: Hon. Carolyn B. Kuhl
Dept.: 12

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and
2 between Plaintiff DAVID MARTINELLO (hereinafter “Plaintiff”), individually and on behalf of the
3 Settlement Class, and Defendant CENTURY WILSHIRE, INC. (hereinafter “Defendant”):

4 **I. DEFINITIONS**

- 5 A. “Action” shall mean *Martinello v. Century Wilshire, Inc.*, currently pending in the
6 Superior Court for the County of Los Angeles, Case No. 20STCV32613 filed August
7 24, 2020, as a class action and representative action pursuant to the Private Attorney
8 General Act of 2004, Labor Code § 2698 *et seq.* (hereinafter, “PAGA”).
- 9
- 10 B. “Aggrieved Employees” shall mean all of Defendant’s current and former non-
11 exempt employees employed in California between June 10, 2019 and April 27, 2021.
- 12
- 13 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
14 Class Action and Release of Claims.
- 15
- 16 D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and
17 Shani Zakay of Zakay Law Group, APLC.
- 18
- 19 E. “Class Counsel Award” means the award of fees and expenses that the Court
20 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
21 and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-
22 third of the Total Settlement Amount currently estimated to be \$108,333 out of
23 \$325,000 plus costs and expenses not to exceed \$20,000.00. Class Counsel’s award
24 for attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law
25 Firm, APC and 50% to Zakay Law Group, APLC).
- 26
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- 1 F. "Class Data" means information regarding Settlement Class Members that Defendant
2 will in good faith compile from its records and provide to the Settlement
3 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall
4 include: each Settlement Class Member's full name; last known address; Social
5 Security Number; start dates and end dates of employment, and number of
6 Workweeks as a Settlement Class Member during the Class Period and PAGA Period
7 and email address, if known.
8
- 9 G. "Class Period" means the period from April 6, 2016 to the earlier of July 27, 2021 or
10 the date or preliminary approval of settlement.
11
- 12 H. "Class Representative Service Award" means the amount that the Court authorizes to
13 be paid to the Class Representative, in addition to his Individual Settlement Payment
14 and his pro-rata share of the PAGA Settlement, in recognition of his efforts and risks
15 in assisting with the prosecution of the Action and in exchange for executing a
16 General Release of Defendant.
17
- 18 I. "Class Representative" means Plaintiff DAVID MARTINELLO.
19
- 20 J. "Court" means the Superior Court for the State of California, County of Los Angeles.
21
- 22 K. "Defendant" shall mean CENTURY WILSHIRE, INC., a California corporation.
23
- 24 L. "Effective Date" means the earliest date, following entry by the Court of an order
25 and judgment finally approving this Settlement, upon which one of the following have
26 occurred: (i) if no objection is filed to the settlement and no objector appears at the
27 hearing on final approval, the date of the Court's entry of the order granting final
28

1 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
2 hearing on final approval, then the earlier of the following: (a) the expiration of all
3 potential appeal periods without a filing of a notice of appeal of the final approval
4 order or judgment; (b) final affirmance of the final approval order and judgment by
5 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
6 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
7 the final approval order and judgment is no longer subject to further judicial review.
8

9
10 M. "Funding Date" shall mean sixty-five (65) calendar days after the Effective Date and
11 is the date Defendant transfers the Total Settlement Amount into the QSF in accord
12 with the terms of this Agreement.

13
14 N. "Individual Settlement Payment" means the amount payable from the Net Settlement
15 Amount to each Settlement Class Member and excludes any amounts distributed to
16 Settlement Class Members pursuant to PAGA

17
18 O. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
19 Counsel Award, Class Representative Service Award, PAGA Settlement, and
20 Settlement Administration Costs.

21
22 P. "Notice Packet" means the Class Notice to be provided to the Settlement Class
23 Members by the Settlement Administrator in the form set forth as Exhibit A to this
24 Agreement (other than formatting changes to facilitate printing by the Settlement
25 Administrator).

26
27 Q. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
28 Labor Code § 2698 *et seq.*

1 R. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
2 for each Aggrieved Employee divided by the sum total of the Workweeks for all
3 Aggrieved Employees during the PAGA Period.

4
5 S. "PAGA Period" means the period between June 10, 2019 and April 27, 2021.

6
7 T. "PAGA Settlement" shall mean Fifteen Thousand Dollars (\$15,000.00) to be
8 allocated from the Total Settlement Amount.

9
10 U. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
11 Plaintiff or Defendant, individually.

12 V. "Payment Ratio" means the respective Workweeks for each Settlement Class Member
13 divided by the sum total Workweeks for all Settlement Class Members.

14
15 W. "Plaintiff" shall mean DAVID MARTINELLO.

16
17 X. "QSF" means the Qualified Settlement Fund established, designated and maintained
18 by the Settlement Administrator to fund the Total Settlement Amount.

19
20 Y. "Released Claims" means all claims, charges, complaints, liens, demands, causes of
21 action, obligations, damages and liabilities, against the Released Parties that were
22 asserted in the Complaint, or that could have been asserted in the Complaint based on
23 any of the facts, alleged in Plaintiff's Complaint, regardless of whether such claims
24 arise under federal, state and/or local law, statute, ordinance, regulation, common law,
25 or other source of law. The Release Claims specifically include claims for: (1) Failure
26 to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and
27 1197.1; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§
28

1 510, *et seq.*; (3) Failure to Provide Required Meal Periods in Violation of California
2 Labor Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (4) Failure to
3 Provide Required Rest Periods in Violation of California Labor Code §§ 226.7 and
4 512 and the Applicable IWC Wage Order; (5) Failure to Provide Accurate Itemized
5 Wage Statements in Violation of California Labor Code § 226; (6) Failure to Provide
6 Wage When Due in Violation of California Labor Code §§ 201, 202, and 203; (7)
7 Failure to Reimburse Employees for Required Expenses in Violation of California
8 Labor Code § 2802; (8) Failure to Provide Gratuities in Violation of California Labor
9 Code § 351; and (9) Unfair Competition in Violation of California Business and
10 Professions Code § 17200, *et seq.* arising from the claims listed above at (1)-(8), and
11 expressly excluding all other claims, including claims for vested benefits, wrongful
12 termination, unemployment insurance, disability, social security, workers'
13 compensation, and class claims outside of the Class Period.
14
15

16 Z. "Released PAGA Claims" mean any and all PAGA Claims alleged in the operative
17 complaint and Plaintiff's PAGA notice to the LWDA which occurred during the
18 PAGA Period, and expressly excluding all other claims, including claims for vested
19 benefits, wrongful termination, unemployment insurance, disability, social security,
20 workers' compensation, and PAGA claims outside the PAGA Period.
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23 AA. "Released Parties" means Defendant and each of its subsidiaries, officers, directors,
24 members, partners, owners, shareholders, employees, former employees, agents,
25 servants, attorneys, assigns, affiliates, independent contractors, volunteers,
26 predecessors, successors, parent companies and organizations, insurers, and any and
27 all other persons, firms and corporations in which Defendant may have an interest.
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3 BB. "Response Deadline" means the date forty-five (45) days after the Settlement
4 Administrator mails Notice Packets to Settlement Class Members and the last date on
5 which Settlement Class Members may submit requests for exclusion or objections to
6 the Settlement.

7
8 CC. "Settlement" means the disposition of the Action pursuant to this Agreement.

9
10 DD. "Settlement Administrator" means ILYM Group. The Settlement Administrator
11 establishes, designates and maintains, as a QSF under Internal Revenue Code section
12 468B and Treasury Regulation section 1.468B-1, into which the amount of the Total
13 Settlement Amount is deposited for the purpose of resolving the claims of Settlement
14 Class Members. The Settlement Administrator shall maintain the funds until
15 distribution in an account(s) segregated from the assets of Defendant and any person
16 related to Defendant. *All accrued interest shall be paid and distributed to the*
17 *Settlement Class Members as part of their respective Individual Settlement*
18 *Payment.*

19
20 EE. "Settlement Class Members" or "Settlement Class" means all of Defendant's current
21 and former non-exempt employees employed in California between April 6, 2016 and
22 the earlier of July 27, 2021 or the date of preliminary approval of settlement. The
23 "Settlement Class Members" shall not include any person who submits a timely and
24 valid request for exclusion as provided in this Agreement.

25
26 FF. "Total Settlement Amount" means Three Hundred Twenty-Five Thousand Dollars
27 (\$325,000.00) that Defendant must pay into the QSF in connection with this
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Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Payment Awards, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs and *exclusive* of the employer's share of payroll tax, if any, triggered by any payment under this Settlement.

GG. "Workweeks", for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Settlement Class Member worked. The Settlement Administrator will calculate the number of Workweeks by calculating the number of days each Settlement Class Member was employed during the Class Period, dividing by seven (7), and rounding up to the nearest whole number. Each Settlement Class Members will receive an Individual Settlement Payment pursuant to the following formula: Individual Workweeks ÷ Class Workweeks × Net Settlement Amount. All Class Members who do not opt-out of settlement are understood to be Settlement Class Members and shall be called "Settlement Class Members." For purposes of distributing the PAGA Settlement to the Settlement Class, Workweeks means the number of weeks of employment for each Settlement Class Member during the PAGA Period.

II. RECITALS

A. On June 11, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant.

B. On August 24, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior Court for:

1. Unfair Competition in Violation of Bus. and Prof. Code §§ 17200;

2. failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1;
3. failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*;
4. failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512;
5. failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512;
6. failure to provide accurate itemized wage statements in violation of California Labor Code section 226;
7. failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203;
8. failure to reimburse employees for required business expenses in violation of California Labor Code section 2802;
9. failure to provide gratuities in violation of California Labor Code section 351; and,
10. Violations of the Private Attorney General Act ("PAGA") Labor Code §§ 2698 *et seq.*

C. On April 27, 2021, the Parties participated in mediation presided over by Tripper Ortman, a respected mediator of wage and hour class and representative actions.

Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based on the mediator's proposal, which was memorialized in the form of a Memorandum of Understanding.

D. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Settlement Class Members have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves 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 Defendant.

1. Settlement Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendant will pay the sum of the Individual Settlement Payments, 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

1 Settlement Amount of Three Hundred Twenty-Five Thousand Dollars
2 (\$325,000.00). The Parties agree that this is a non-reversionary Settlement and
3 that no portion of the Total Settlement Amount shall revert to Defendant.
4 Other than the Defendant's share of employer payroll taxes, Defendant shall
5 not be required to pay more or less than the Total Settlement Amount, except
6 as provided for hereinbelow.
7

8
9 2. Class Size. At the time of mediation, Defendant estimated that the Settlement
10 Class was comprised of 480 individuals that collectively worked
11 approximately 21,179 Workweeks ("Projected Workweeks") during the Class
12 Period. In regard hereto, Defendant will provide a declaration under penalty
13 of perjury confirming the number of Class Members and Workweeks they
14 worked during the Class Period at the time of filing of the motion for
15 preliminary approval. If, at the time of Defendant's declaration, the actual
16 number of Workweeks is 15% higher than the Projected Workweeks (i.e.,
17 greater than 24,356), the end date of the Release Period and Class Period will
18 be adjusted so that the number of Workweeks in the Release Period and Class
19 Period does not exceed 15% of the estimate (24,356 workweeks).
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22 3. Settlement Payment. Defendant shall pay, via wire transfer, the Total
23 Settlement Amount to the Settlement Administrator on the Funding Date.

24
25 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
26 payroll taxes is in addition to the Total Settlement Amount and shall be paid
27 by Defendant within ten (10) calendar days of request by the Settlement
28 Administrator.

- 1 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
2 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
3 release the Released Parties from the Released Claims for the Class Period.
- 4 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
5 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
6 California release the Released Parties from the PAGA Released Claims for the PAGA
7 Period.
- 8 D. General Release by Plaintiff. As of the Funding Date, in consideration for the
9 consideration set forth in this Agreement, Plaintiff, for himself, waives, releases,
10 acquits and forever discharges the Released Parties from any and all claims, actions,
11 charges, complaints, grievances and causes of action, of whatever nature, whether
12 known or unknown, which exist or may exist on their behalf as of the date of this
13 Agreement, including but not limited to any and all tort claims, contract claims, wage
14 claims, wrongful termination claims, disability claims, benefit claims, public policy
15 claims, retaliation claims, statutory claims, personal injury claims, emotional distress
16 claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
17 claims, and any and all claims arising under any federal, state or other governmental
18 statute, law, regulation or ordinance, including, but not limited to claims for violation
19 of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of
20 California's Industrial Welfare Commission, other state wage and hour laws, the
21 Americans with Disabilities Act, the Age Discrimination in Employment Act
22 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil
23 Rights Act of 1964, the California Fair Employment and Housing Act, the California
24 Family Rights Act, the Family Medical Leave Act, the California Government Code,
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1 California's Whistleblower Protection Act, California Business & Professions Code
2 Section 17200 et seq., and any and all claims arising under any federal, state or other
3 governmental statute, law, regulation or ordinance. Plaintiff also waives and
4 relinquishes any and all claims, rights or benefits that they may have under California
5 Civil Code § 1542, which provides as follows:
6

7 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
8 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
9 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
10 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
11 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
12 ***DEBTOR OR RELEASED PARTY.***
13

14 Plaintiff is a creditor and/or "releasing party" within the meaning of Civil Code §
15 1542. Plaintiff may discover claims or facts in addition to, or different from, those
16 which he now knows or believes to exist, but Plaintiff expressly agrees to fully,
17 finally and forever settle and release any and all claims against the Released Parties,
18 known or unknown, suspected or unsuspected, which exist or may exist on behalf of
19 or against the other at the time of execution of this Agreement, including, but not
20 limited to, any and all claims relating to or arising from Plaintiff's employment with
21 Defendant. The Parties further acknowledge, understand, and agree that this
22 representation and commitment is essential to the Agreement and that this
23 Agreement would not have been entered into were it not for this representation and
24 commitment.
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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. Defendant fully funds 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 Defendant from obtaining a complete resolution of the Released Claims:

20

- 21 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
22 and shall not be admissible in any judicial, administrative or arbitral
23 proceeding for any purpose or with respect to any issue, substantive or
24 procedural;
- 25
- 26 2. The conditional class certification (obtained for any purpose) shall be void *ab*
27 *initio* and of no force or effect, and shall not be admissible in any judicial,
28

1 administrative or arbitral proceeding for any purpose or with respect to any
2 issue, substantive or procedural; and

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

7
8 G. Certification of the Settlement Class. The Parties stipulate to conditional class
9 certification of the Settlement Class for the Class Period for purposes of settlement
10 only. In the event that this Settlement is not approved by the Court, fails to become
11 effective, or is reversed, withdrawn or modified by the Court, or in any way prevents
12 or prohibits Defendant from obtaining a complete resolution of the Released Claims,
13 the conditional class certification (obtained for any purpose) shall be void *ab initio* and
14 of no force or effect, and shall not be admissible in any judicial, administrative or
15 arbitral proceeding for any purpose or with respect to any issue, substantive or
16 procedural.

17
18
19 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
20 effect of the payments called for, and Settlement Class Members are not relying on
21 any statement or representation by the Parties in this regard. Settlement Class
22 Members understand and agree that they will be responsible for the payment of any
23 taxes and penalties assessed on the Individual Settlement Payments described and will
24 be solely responsible for any penalties or other obligations resulting from their
25 personal tax reporting of Individual Settlement Payments.

1 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
2 the “acknowledging party” and each Party to this Agreement other than the
3 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision
4 of this Agreement, and no written communication or disclosure between or among the
5 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
6 such communication or disclosure constitute or be construed or be relied upon as, tax
7 advice within the meaning of United States Treasury Department circular 230 (31 CFR
8 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
9 her or its own, independent legal and tax counsel for advice (including tax advice) in
10 connection with this Agreement, (b) has not entered into this Agreement based upon
11 the recommendation of any other Party or any attorney or advisor to any other Party,
12 and (c) is not entitled to rely upon any communication or disclosure by any attorney
13 or adviser to any other party to avoid any tax penalty that may be imposed on the
14 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
15 any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
16 strategies (regardless of whether such limitation is legally binding) upon disclosure by
17 the acknowledging party of the tax treatment or tax structure of any transaction,
18 including any transaction contemplated by this Agreement.
19

20
21
22 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
23 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
24 which shall include this Settlement Agreement.
25

26 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
27 establishing and administering the QSF; calculating, processing and mailing payments
28

1 to the Class Representatives, Class Counsel, LWDA and Settlement Class Members;
2 printing, mailing and emailing the Notice Packets to the Settlement Class Members as
3 directed by the Court; establishing and maintaining the a landing page hosted on its
4 website to containing information about the Settlement; receiving and reporting the
5 objections and requests for exclusion; calculating, deducting and remitting all legally
6 required taxes from Individual Settlement Payments and distributing tax forms for the
7 Wage Portion and Non-Wage Portion of the Individual Settlement Payments;
8 processing and mailing tax payments to the appropriate state and federal taxing
9 authorities; providing declaration(s) as necessary in support of preliminary and/or final
10 approval of this Settlement; posting notice of entry of judgment on its website; and
11 other tasks as the Parties mutually agree or the Court orders the Settlement
12 Administrator to perform. The Settlement Administrator shall keep the Parties timely
13 apprised of the performance of all Settlement Administrator responsibilities by among
14 other things, sending a weekly status report to the Parties' counsel stating the date of
15 the mailing, the of number of Elections Not to Participate in Settlement it receives
16 (including the numbers of valid and deficient), and number of objections received.
17
18
19

20 L. Notice Procedure.

- 21
22 1. Class Data. No later than fifteen (15) calendar days after the Preliminary
23 Approval Date, Defendant shall provide the Settlement Administrator an
24 electronic file with the Class Data for purposes of preparing and mailing
25 Notice Packets to Settlement Class Members. The Class Data shall include the
26 following information for each Settlement Class Member: (a) full name, last
27 known address, social security number; and (b) the start and end dates for each
28

1 period the Settlement Class Member was employed by Defendant within the
2 Class Period. Defendant shall verify the total number of Workweeks at the
3 time Class Data is provided to the Settlement Administrator
4

5 2. Notice Packets.

6
7 a) The Notice Packet shall contain the Notice of Class Action Settlement
8 in a form substantially similar to the form attached as Exhibit A. The
9 Notice of Class Action Settlement shall inform Settlement Class
10 Members that they need not do anything in order to receive an
11 Individual Settlement Payment and to keep the Settlement
12 Administrator apprised of their current mailing address, to which the
13 Individual Settlement Payments will be mailed following the Funding
14 Date. The Notice of Class Action Settlement shall set forth the release
15 to be given by all members of the Settlement Class who do not request
16 to be excluded from the Settlement Class in exchange for an Individual
17 Settlement Payment, the number of Workweeks worked by each
18 Settlement Class Member during the Class Period, and the estimated
19 amount of their Individual Settlement Payment if they do not request
20 to be excluded from the Settlement. The Settlement Administrator
21 shall use the Class Data to determine Class Members' Workweeks.
22

23
24 b) The Notice Packet's mailing envelope shall include the following
25 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
26 ENTITLED TO PARTICIPATE IN A CLASS ACTION
27 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
28

1 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
2 NOTICE.”

3
4 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
5 the Settlement Administrator will perform a search based on the National
6 Change of Address Database to update and correct any known or identifiable
7 address changes. No later than fourteen (14) calendar days after receiving the
8 Class Data from Defendant, the Settlement Administrator shall mail and email
9 copies of the Notice Packet to all Settlement Class Members via regular First-
10 Class U.S. Mail and electronic mail. The Settlement Administrator shall
11 exercise its best judgment to determine the current mailing address for each
12 Settlement Class Member. The address identified by the Settlement
13 Administrator as the current mailing address shall be presumed to be the best
14 mailing address for each Settlement Class Member.
15

16
17 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
18 Administrator as non-delivered on or before the Response Deadline shall be
19 re-mailed to any forwarding address provided. If no forwarding address is
20 provided, the Settlement Administrator shall promptly attempt to determine a
21 correct address by lawful use of skip-tracing, or other search using the name,
22 address and/or Social Security number of the Settlement Class Member
23 involved, and shall then perform a re-mailing, if another mailing address is
24 identified by the Settlement Administrator. In addition, if any Notice Packets,
25 which are addressed to Settlement Class Members who are currently
26 employed by Defendant, are returned to the Settlement Administrator as non-
27
28

1 delivered and no forwarding address is provided, the Settlement Administrator
2 shall notify Defendant. Defendant will request that the currently employed
3 Settlement Class Member provide a corrected address, and transmit to the
4 Administrator any corrected address provided by the Settlement Class
5 Member. Settlement Class Members who received a re-mailed Notice Packet
6 shall have their Response Deadline extended fifteen (15) days from the
7 original Response Deadline.
8

9
10 5. Disputes Regarding Individual Settlement Payments. Settlement Class
11 Members will have the opportunity, should they disagree with Defendant's
12 records regarding the start and end dates of employment while paid on a draw,
13 as stated on their Employment Information Sheet, to provide documentation
14 and/or an explanation to show contrary dates. If there is a dispute, the
15 Settlement Administrator will consult with the Parties to determine whether
16 an adjustment is warranted. The Settlement Administrator shall determine the
17 eligibility for, and the amounts of, any Individual Settlement Payments under
18 the terms of this Agreement. The Settlement Administrator's determination
19 of the eligibility for and amount of any Individual Settlement Payment shall
20 be binding upon the Settlement Class Member and the Parties.
21

22
23 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
24 by the Settlement Administrator concerning the administration of the
25 Settlement will be resolved by the Court under the laws of the State of
26 California. Before any such involvement of the Court, counsel for the Parties
27
28

1 will confer in good faith to resolve the disputes without the necessity of
2 involving the Court.

3
4 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
5 Packet shall state that Settlement Class Members who wish to exclude
6 themselves from the Settlement must submit a written request for exclusion
7 by the Response Deadline. The written request for exclusion must state that
8 the Settlement Class Member wishes to exclude himself or herself from the
9 Settlement and (1) must contain the name, address, and the last four digits of
10 the Social Security number of the person requesting exclusion; (2) must be
11 signed by the Settlement Class Member; (3) must be postmarked or fax
12 stamped by the Response Deadline and returned to the Settlement
13 Administrator at the specified address or fax telephone number; and (4)
14 contain a typewritten or handwritten notice stating in substance: "I wish to
15 opt out of the settlement of the class action lawsuit entitled *Martinello v.*
16 *Century Wilshire, Inc.*, currently pending in the Superior Court for the County
17 of Los Angeles, Case No. 20STCV32613. I understand that by requesting to
18 be excluded from the settlement, I will receive no money from the Settlement
19 described in this Notice." The request for exclusion will not be valid if it is
20 not timely submitted, if it is not signed by the Settlement Class Member, or if
21 it does not contain the name and address and last four digits of the Social
22 Security number of the Settlement Class Member. The date of the postmark
23 on the mailing envelope or fax stamp on the request for exclusion shall be the
24 exclusive means used to determine whether the request for exclusion was
25 timely submitted. Any Settlement Class Member who requests to be excluded
26
27
28

1 from the Settlement Class will not be entitled to an Individual Settlement
2 Payment and will not be otherwise bound by the terms of the Settlement or
3 have any right to object, appeal or comment thereon. However, any
4 Settlement Class Member that submits a timely request for exclusion that is
5 also a member of the Aggrieved Employees will still receive their pro rata
6 share of the PAGA Settlement, as specified below, and in consideration, will
7 be bound by the Released PAGA Claims as set forth herein. Settlement Class
8 Members who fail to submit a valid and timely written request for exclusion
9 on or before the Response Deadline shall be bound by all terms of the
10 Settlement and any final judgment entered in this Action if the Settlement is
11 approved by the Court. No later than fourteen (14) calendar days after the
12 Response Deadline, the Settlement Administrator shall provide counsel for
13 the Parties with a final list of the Settlement Class Members who have timely
14 submitted written requests for exclusion. At no time shall any of the Parties
15 or their counsel seek to solicit or otherwise encourage members of the
16 Settlement Class to submit requests for exclusion from the Settlement.
17
18
19

- 20 8. Objections. The Notice of Class Action Settlement contained in the Notice
21 Packet shall state that Settlement Class Members who wish to object to the
22 Settlement must mail to the Settlement Administrator a written statement of
23 objection ("Notice of Objection") by the Response Deadline. The postmark
24 date of mailing shall be deemed the exclusive means for determining that a
25 Notice of Objection was served timely. The Notice of Objection must be
26 signed by the Settlement Class Member and state: (1) the case name and
27 number; (2) the name of the Settlement Class Member; (3) the address of the
28

1 Settlement Class Member; (4) the last four digits of the Settlement Class
2 Member's Social Security number; (4) the basis for the objection; and (5) if
3 the Settlement Class Member intends to appear at the Final
4 Approval/Settlement Fairness Hearing. Settlement Class Members who fail
5 to make objections in writing in the manner specified above may make their
6 objections orally at the Final Approval/Settlement Fairness Hearing with the
7 Court's permission. Settlement Class Members will have a right to appear at
8 the Final Approval/Settlement Fairness Hearing in order to have their
9 objections heard by the Court. At no time shall any of the Parties or their
10 counsel seek to solicit or otherwise encourage Settlement Class Members to
11 file or serve written objections to the Settlement or appeal from the Order and
12 Final Judgment. Settlement Class Members who submit a written request for
13 exclusion may not object to the Settlement.
14
15

16 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
17 the Total Settlement Amount on or before the Funding Date, plus any employer's share
18 of payroll taxes as mandated by law within the time specified herein.
19

20 1. Individual Settlement Payments. Individual Settlement Payments shall be
21 paid from the Net Settlement Amount and shall be paid pursuant to the
22 formula set forth below.
23

24 a) Calculation of Individual Settlement Payments. Using the Class Data,
25 the Settlement Administrator shall add up the total number of
26 Workweeks for all Settlement Class Members. The respective
27 Workweeks for each Settlement Class Member will be divided by the
28

1 total Workweeks for all Settlement Class Members, resulting in the
2 Payment Ratio for each Settlement Class Member. Each Settlement
3 Class Member's Payment Ratio will then be multiplied by the Net
4 Settlement Amount to calculate each Settlement Class Member's
5 estimated Individual Settlement Payments. Each Individual
6 Settlement Payment will be reduced by any legally mandated
7 employee tax withholdings (e.g., employee payroll taxes, etc.).
8 Individual Settlement Payments for Class Members who submit valid
9 and timely requests for exclusion will be redistributed to Settlement
10 Class Members who do not submit valid and timely requests for
11 exclusion on a pro rata basis based on their respective Payment Ratios.
12
13

14 b) Calculation of Individual Payments to the Aggrieved Employees.

15 Using the Class Data, the Settlement Administrator shall add up the
16 total number of Workweeks for all Aggrieved Employees during the
17 PAGA Period. The respective Workweeks for each Aggrieved
18 Employee will be divided by the total Workweeks for all Aggrieved
19 Employees, resulting in the "PAGA Payment Ratio" for each
20 Aggrieved Employee. Each Aggrieved Employee's PAGA Payment
21 Ratio will then be multiplied by the Aggrieved Employee Payment to
22 calculate each Aggrieved Employee's estimated Individual PAGA
23 Settlement.
24

25
26 c) Allocation of Individual Settlement Payments. For tax purposes,
27 Individual Settlement Payments shall be allocated and treated as
28

1 follows: 33.33% as wages (“Wage Portion”); 66.67% as penalties and
2 interest (“Non-Wage Portion”). The Wage Portion is subject to wage
3 withholdings and shall be reported on IRS Form W-2. The Non-Wage
4 Portion shall not be subject to wage withholdings and shall be reported
5 on IRS Form 1099.

6
7 d) Allocation of Aggrieved Employee Payments. For tax purposes,
8 Aggrieved Employee Settlement Payments shall be allocated and
9 treated as 100% penalties and shall be reported on IRS Form 1099.

10
11 e) Mailing. Individual Settlement Payments and Aggrieved Employee
12 Payments shall be mailed by regular First-Class U.S. Mail to
13 Settlement Class Members’ last known mailing address no later than
14 fifteen (15) calendar days after the Funding Date.

15
16 f) Expiration. Any checks issued to Settlement Class Members shall
17 remain valid and negotiable for one hundred and eighty (180) days
18 from the date of their issuance. If a Settlement Class Member does not
19 cash his or her settlement check within 90 days, the Settlement
20 Administrator will send a letter to such persons, advising that the
21 check will expire after the 180th day, and invite that Settlement Class
22 Member to request reissuance in the event the check was destroyed,
23 lost or misplaced. In the event an Individual Settlement Payment
24 check has not been cashed within one hundred and eighty (180) days,
25 all funds represented by such uncashed checks, plus any interest
26 accrued thereon, shall be distributed consistent with California Code
27
28

1 of Civil Procedure Section 384 as follows: The Children Advocacy
2 Institute. Neither Class Counsel nor Defendant's counsel has any
3 interest, pecuniary or otherwise, in the Children Advocacy Institute.
4

- 5 2. Class Representative Service Award. In addition to the Individual Settlement
6 Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award
7 of not more than \$7,500 as the Class Representative Service Award.
8 Defendant does not presently intend to oppose a Class Representative Service
9 Award of no more than \$7,500 for Plaintiff. The Settlement Administrator
10 shall pay the Class Representative Service Award, either in the amount stated
11 herein if approved by the Court or some other amount as approved by the
12 Court, to Plaintiff from the Total Settlement Amount no later than ten (10)
13 calendar days after the Funding Date. Any portion of the requested Class
14 Representative Service Award that is not awarded to the Class Representative
15 shall be part of the Net Settlement Amount and shall be distributed to
16 Settlement Class Members as provided in this Agreement. The Settlement
17 Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class
18 Representative Service Award. Plaintiff shall be solely and legally
19 responsible to pay any and all applicable taxes on his Class Representative
20 Service Award and shall hold harmless the Released Parties from any claim
21 or liability for taxes, penalties, or interest arising as a result of the Class
22 Representative Service Award. The Class Representative Service Award shall
23 be in addition to Plaintiff's Individual Settlement Payment as a Settlement
24 Class Member. Approval of this Settlement shall not be conditioned on Court
25 approval of the requested amount of the Class Representative Service Award.
26
27
28

1 In the event that the Court reduces or does not approve the requested Class
2 Representative Service Award, Plaintiff shall not have the right to revoke the
3 Settlement, and it will remain binding.
4

- 5 3. Class Counsel Award. Defendant understands a motion by Class Counsel for
6 attorneys' fees not to exceed one-third of the Total Settlement Amount
7 currently estimated to be \$108,333.00 plus costs and expenses supported by
8 declaration not to exceed Twenty Thousand Dollars (\$20,000.00), from the
9 Total Settlement Amount will be filed. Any portion of the requested Class
10 Counsel Award that is not awarded to Class Counsel shall be part of the Net
11 Settlement Amount and shall be distributed to Settlement Class Members as
12 provided in this Agreement. The Settlement Administrator shall allocate and
13 pay the Class Counsel Award to Class Counsel from the Total Settlement
14 Amount no later than five (5) calendar days after the Funding Date. Class
15 Counsel shall be solely and legally responsible to pay all applicable taxes on
16 the payment made pursuant to this paragraph. The Settlement Administrator
17 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
18 made pursuant to this paragraph. In the event that the Court reduces or does
19 not approve the requested Class Counsel Award, Plaintiff and Class Counsel
20 shall not have the right to revoke the Settlement, or to appeal such order, and
21 the Settlement will remain binding.
22
23
24

- 25 4. PAGA Settlement. Fifteen Thousand Dollars (\$15,000) shall be allocated
26 from the Total Settlement Amount for settlement of claims for civil penalties
27 under the Private Attorneys General Act of 2004 ("PAGA Settlement"). The
28

1 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
2 Settlement (\$11,250) to the California Labor and Workforce Development
3 Agency no later than twenty-five (25) calendar days after the Funding Date
4 (hereinafter "LWDA Payment"). Twenty-five (25%) of the PAGA Settlement
5 (\$3,750) will be distributed to the Aggrieved Employees as described in this
6 Agreement (hereinafter "Aggrieved Employee Payment"). For purposes of
7 distributing the PAGA Settlement to the Aggrieved Employees, each
8 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
9 Employee Payment using the PAGA Payment Ratio as defined above.
10

11
12 5. Settlement Administration Costs. The Settlement Administrator shall be paid
13 for the costs of administration of the Settlement from the Total Settlement
14 Amount. The estimate of the Settlement Administration Costs is not to exceed
15 \$15,000. The Settlement Administrator shall be paid the Settlement
16 Administration Costs no later than twenty-five (25) calendar days after the
17 Funding Date.
18

19 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
20 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
21 twenty-eight (28) days following the expiration of the Response Deadline, which
22 motion shall request final approval of the Settlement and a determination of the
23 amounts payable for the Class Representative Service Award, the Class Counsel
24 Award, the PAGA Settlement, and the Settlement Administration Costs.
25

26
27 1. Declaration by Settlement Administrator. No later than fourteen (14) days
28 after the Response Deadline, the Settlement Administrator shall submit a

1 declaration in support of Plaintiff's motion for final approval of this
2 Settlement detailing the number of Notice Packets mailed and re-mailed to
3 Settlement Class Members, the number of undeliverable Notice Packets, the
4 number of timely requests for exclusion, the number of objections received,
5 the amount of the average Individual Settlement Payment and highest
6 Individual Settlement Payment, the Settlement Administration Costs, and any
7 other information as the Parties mutually agree or the Court orders the
8 Settlement Administrator to provide.
9

10
11 2. Final Approval Order and Judgment. Class Counsel shall present an Order
12 Granting Final Approval of Class Action Settlement to the Court for its
13 approval, and Judgment thereon, at the time Class Counsel files the Motion
14 for Final Approval.
15

16 N. Defendant's Option to Revoke Settlement. Defendant has the unilateral right to
17 revoke the Settlement and Defendant shall have, in its sole discretion, the option to
18 terminate this Settlement if, after the Response Deadline, the number of Settlement
19 Class Members who submitted timely and valid written requests for exclusion from
20 the Settlement is at least ten percent (10%) of all Settlement Class Members or if
21 Settlement Class Members whose potential Individual Settlement Payments of the
22 Net Settlement Amount exceeds ten percent (10%) opt-out of the Settlement. If
23 Defendant exercises the option to terminate this Settlement, Defendant shall: (a)
24 provide written notice to Class Counsel within five (5) calendar days after the
25 Settlement Administrator provides information regarding opt outs (which is to occur
26 no later than fourteen (14) calendar days after the Response Deadline, and (b) pay all
27
28

1 Settlement Administration Costs incurred up to the date or as a result of the
2 termination. The Parties' agreements will be void *ab initio*; and the Parties shall
3 proceed in all respects as if this Agreement had not been executed.
4

5 O. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
6 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
7 Final Approval, including the Order Granting Final Approval of Class Action
8 Settlement, and Judgment before filing with the Court. The Parties and their counsel
9 will cooperate with each other and use their best efforts to affect the Court's approval
10 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
11 Judgment.
12

13
14 P. Cooperation. The Parties and their counsel will cooperate with each other and use
15 their best efforts to implement the Settlement.

16 Q. Confidentiality. Class Counsel agrees they will not solicit putative Class Members to
17 exclude themselves from this Settlement, and further agrees that it will not initiate or
18 contact or have any communications with putative Class Members during the
19 Settlement approval process. Nothing will prevent Class Counsel from responding to
20 inquiries from putative Class Members. For its party, Defendant agrees it shall not
21 discourage putative Class Members from participating in the Settlement and shall refer
22 any questions to the Claims Administrator.
23

24
25 1. No media. No public comment, communications to media, or any form of
26 advertising or public announcement (including social media) regarding the case shall
27 be made by Plaintiff or Class Counsel at any time.
28

1 2. Confidentiality. Prior to filing of the Motions for Preliminary and Final
2 Approval, Class Counsel shall not discuss the terms of the settlement or the
3 negotiations leading to settlement with any person other than the Plaintiff and Class
4 Administrator.

5
6 R. Destruction of Return of Evidence. Upon distribution of all settlement funds, the
7 Parties shall destroy all confidential documents related to the Complaint, the litigation
8 and this Settlement.

9
10 S. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
11 including an agreement to stay and/or withdraw all discovery, except such proceedings
12 necessary to implement and complete the Settlement, pending the Final
13 Approval/Settlement Fairness Hearing to be conducted by the Court

14
15 T. Amendment or Modification. This Agreement may be amended or modified only by
16 a written instrument signed by counsel for all Parties or their successors-in-interest.

17
18 U. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
19 Agreement among these Parties, and no oral or written representations, warranties or
20 inducements have been made to any Party concerning this Agreement or its Exhibit
21 other than the representations, warranties and covenants contained and memorialized
22 in this Agreement and its Exhibit.

23
24 V. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
25 represent they are expressly authorized by the Parties whom they represent to negotiate
26 this Agreement and to take all appropriate Action required or permitted to be taken by
27 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
28

documents required to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of Defendant represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

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

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

Y. Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronic signature, or email for which purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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

AA. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction under California Code of Civil Procedure Section 664.6 with respect to the

1 interpretation, implementation and enforcement of the terms of this Agreement and all
2 orders and judgments entered in connection therewith, and the Parties and their counsel
3 submit to the jurisdiction of the Court for purposes of interpreting, implementing and
4 enforcing the settlement and all orders and judgments entered in connection with this
5 Agreement. The Parties further agree that the time within which to bring this action to
6 trial under California Code of Civil Procedure section 583.310 shall be extended from
7 the date of the signing of this agreement by all parties until entry of the final approval
8 order and judgment, or if not entered, the date this agreement shall not longer be of
9 any force or effect.
10

11
12 BB. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
13 the Court shall first attempt to construe the provisions valid to the fullest extent
14 possible consistent with applicable precedents so as to define all provisions of this
15 Agreement valid and enforceable.
16

17 CC. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not currently
18 intend to pursue any claims against the Released Parties, including, but not limited to,
19 any and all claims relating to or arising from Plaintiffs' employment with Defendant,
20 regardless of whether Class Counsel is currently aware of any facts or legal theories
21 upon which any claims or causes of action could be brought against Released Parties,
22 including those facts or legal theories alleged in the operative complaint in this Action.
23 The Parties further acknowledge, understand and agree that this representation is
24 essential to the Agreement and that this Agreement would not have been entered into
25 were it not for this representation.
26
27
28

DD. Court Filings. The Parties agree not to object to any Court filings consistent with this Agreement.

EE. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this settlement only.

FF. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Claims have no merit and do not give rise to liability or damages, whatsoever. This Agreement is a compromise of highly disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

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

DATED: 8/18/2021

DocuSigned by:

David Martinello

0698C4C42B414DF...

DAVID MARTINELLO

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

DATED: _____

CENTURY WILSHIRE, INC.

Printed Name

Title

1 DD. Court Filings. The Parties agree not to object to any Court filings consistent with this
2 Agreement.

3
4 EE. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
5 certification for purposes of this settlement only.

6
7 FF. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
8 Released Claims have merit and give rise to liability on the part of Defendant.
9 Defendant claims that the Released Claims have no merit and do not give rise to
10 liability or damages, whatsoever. This Agreement is a compromise of highly disputed
11 claims. Nothing contained in this Agreement and no documents referred to and no
12 action taken to carry out this Agreement may be construed or used as an admission by
13 or against the Defendant or Plaintiff or Class Counsel as to the merits or lack thereof
14 of the claims asserted. Other than as may be specifically set forth herein, each Party
15 shall be responsible for and shall bear its/his own attorney's fees and costs.
16

17
18 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

19
20 DATED: _____

21 DAVID MARTINELLO

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

23 DATED: 8/20/21

24 
CENTURY WILSHIRE, INC.

25 Maya Mallick
26 Printed Name

27 Managing Member
28 Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 8/18/2021

JCL LAW FIRM, A.P.C.

By: _____

DocuSigned by:

Jean-Claude Lapuyade

0EBC25D5B9CD469...

Attorneys for the Named Plaintiffs and the Plaintiff Class

DATED: 8/18/2021

ZAKAY LAW GROUP, APLC

By: _____

DocuSigned by:

[Signature]

4ECDE73A91D4420...

Attorneys for the Named Plaintiff and the Class

DATED: 8/20/2021

LITTLER MENDELSON, P.C.

By: _____

Kate A Cole

Attorneys for Defendants

EXHIBIT A

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT AND FINAL HEARING DATE

(Martinello v. Century Wilshire, Inc., Case No. 20STCV32613)

**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 Defendant 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 David Martinello (“Plaintiff”) and Defendant Century Wilshire, Inc. (“Defendant”). 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 Defendant Century Wilshire, Inc.’s current and former non-exempt employees employed in California at any time during the Class Period.

The “Class Period” is the period of time running from April 6, 2016 to the earlier of July 27, 2021 or the date of preliminary approval of the settlement.

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?

- A. On August 24, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Los Angeles. Plaintiff asserted claims that Defendant: (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 provide wages when due in violation of California Labor Code §§ 201, 202, and 203; (h) Failed to reimburse employees for required business expenses in violation of California Labor Code § 2802; (i) Failed to provide gratuities in violation of California Labor Code § 351; and (j) Violations of the Private Attorneys General Act (“PAGA”).

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continues to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant 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 separations from employment; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

Notwithstanding, the Parties have reached an agreement to settle the Action in lieu of protracted litigation. 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 Zakay Law Group, APC and The JCL Law Firm, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Net Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000) (the “Net Settlement Amount”) to fund the settlement. The Net 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 Payment to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Net 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 Net Settlement Amount. The Settlement provides for certain payments to be made from the Net Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Net Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$15,000, 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 Net Settlement Amount (currently \$108,333) and a Class Counsel Litigation Expenses Payment of not more than \$20,000 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 Payments. Class Representative Service Payments of up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$15,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$11,250 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$3,750 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 Net Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Settlement Share for each Settlement Class Member will be calculated as follows: dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and (b) multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek.
- 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 Workweeks worked by all PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of Workweeks worked by each respective PAGA Employee during the PAGA Period. "PAGA Employees" means all of Defendant Century Wilshire, Inc.'s current and former non-exempt employees employed in California at any time during the PAGA Period. PAGA Period means the period of time from June 10, 2019 and April 27, 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. Thirty-Three and 1/3 Percent (33.33%) of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Sixty-Six and 2/3 Percent (66.67%) of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Settlement 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 Defendant's 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 the Funding Date of the Total Settlement Amount Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims are defined as all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, against the Released Parties that were asserted in the Complaint, or that could have been asserted in the Complaint based on any of the facts, alleged in Plaintiff's Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Release Claims specifically include claims for: (1) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510, *et seq.*; (3) Failure to Provide Required Meal Periods in Violation of California Labor Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (4) Failure to Provide Required Rest Periods in Violation of California Labor Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (5) Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code § 226; (6) Failure to Provide Wage When Due in Violation of California Labor Code §§ 201, 202, and 203; (7) Failure to Reimburse Employees for Required Expenses in Violation of California Labor Code § 2802; (8) Failure to Provide Gratuities in Violation of California Labor Code § 351; and (9) Unfair Competition in Violation of California Business and Professions Code § 17200, *et seq.* arising from the claims listed above at (1)-(8), 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 Funding Date the 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" are defined any and all PAGA Claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside 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 Defendant 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?

Defendant's records reflect that you have <<____>> workweeks worked during the Class Period. ().

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 _____, 2021 [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 _____, 2021. 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 of the class action and settlement of the case *Martinello, et al. v. Century Wilshire, Inc., Case No. 20STCV32613*." 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 _____, 2021, 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 objections or other correspondence must also state the name and number of the case, which is *Martinello, et al. v. Century Wilshire, Inc., Case No. 20STCV32613*. 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 _____, 2021. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APC
3990 Old Town Ave. Suite C204
San Diego, CA 92110

Class Counsel:

Jean-Claude Lapuyade, Esq.
The JCL Law Firm, APC
3990 Old Town Ave. Suite C204
San Diego, CA 92110

Counsel for Defendant:

Jon Yonemitsu, Esq.
Kara Adelle Ritter Cole, Esq.
Littler Mendelson, P.C. 501 W.
Broadway, Suite 900

Tel: (619) 892-7095
 Email: shani@zakaylaw.com
 Website: www.zakaylaw.com

Tel: 619-599-8292
 Email: jlapuyade@jcl-lawfirm.com
 Website: www.jcl-lawfirm.com

San Diego, CA 92101
 Tel: (619) 232-0441
 Email: jyonemitsu@littler.com
kcole@littler.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 N Spring St, Los Angeles, CA 90012 in Department 9 before Judge Carolyn B. Kuhl. 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.

Under General Order (2020-GEN-25-00), public access to courthouses is limited at all times to judicial officers, court employees, co-lessees, Judicial Council staff, vendors, jurors, mediators, authorized persons (including news media representatives and news reporters), attorneys, litigants and witnesses with matters on calendar, and individuals with confirmed appointments. Members of the public, not otherwise referenced above, who wish to attend a court proceeding may do so upon advance request and at the discretion of the judicial officer presiding over the matter. Instructions on how to make such a request are available on the Court's website at the [Here for You | Safe for You](#) page.

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

You may call the Settlement Administrator at _____ or write to *Martinello, et al. v. Century Wilshire, Inc., Case No. 20STCV32613*, 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 The 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 Children Advocacy Institute. 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



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

June 10, 2020

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

CENTURY WILSHIRE, INC
c/o CATHERINE JOHNSON
9400 CULVER BLVD.
CULVER CITY CA 90232

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, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802 and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir / Madam:

This office represents David Martinello (“Plaintiff”) and other aggrieved employees in an action against Century Wilshire, Inc., (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff 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.

Plaintiff was employed by Defendant in California from June 2019 to November 2019. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, and with minimum and overtime wages for all time worked. Defendant further has a policy and practice of retaining for itself a portion of gratuities and/or using a portion of these gratuities to pay managers or other non-service employees. Therefore, from time to time, Defendant also failed to pay Plaintiff gratuities owed to him.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. 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, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802 and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and 2698 *et seq.*

A copy of the proposed Complaint 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 Plaintiff 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.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney at Law

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

DAVID MARTINELLO, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

CENTURY WILSHIRE, INC., a California
Corporation; and DOES 1-50, 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 STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and
- 9) FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant CENTURY WILSHIRE, INC. (“Defendant” or “DEFENDANT”) is a
7 California Corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in California.

9 2. DEFENDANT, owns and operates two hotels in the County of Los Angeles in
10 California.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods June 2019 to
13 November 2019.

14 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time between
17 April 6, 2016 and on the date as determined by the Court (the “CALIFORNIA CLASS
18 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
19 Members is under five million dollars (\$5,000,000.00).

20 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
21 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
22 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
23 which failed to lawfully compensate these employees for all their time worked, including
24 overtime. DEFENDANT’s uniform policy and practice alleged herein is an unlawful, unfair and
25 deceptive business practice whereby DEFENDANT retained and continues to retain wages due
26 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
27 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
28 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the

1 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
2 current unlawful conduct, and all other appropriate legal and equitable relief.

3 6. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
5 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
6 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
7 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
8 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
9 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
10 responsible in some manner for one or more of the events and happenings that proximately
11 caused the injuries and damages hereinafter alleged

12 7. The agents, servants and/or employees of the Defendants and each of them acting
13 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
14 agent, servant and/or employee of the Defendants, and personally participated in the conduct
15 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
16 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
17 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
18 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
19 Defendants' agents, servants and/or employees

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. From time to time,
25 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
26 paying them for all the time they were under DEFENDANT'S control. Specifically,
27 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
28 PLAINTIFF'S off-duty meal break, as well as before his shift started and after his shift ended

1 when donning and doffing his uniforms. PLAINTIFF was often interrupted by work
2 assignments during his breaks. Indeed there were many days where PLAINTIFF did not even
3 receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
4 Members, from time to time, forfeited minimum wage and overtime compensation by working
5 without their time being accurately recorded and without compensation at the applicable
6 minimum wage and overtime rates. DEFENDANT'S uniform policy and practice not to pay
7 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
8 DEFENDANT'S business records.

9 9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in
10 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
11 CALIFORNIA CLASS Members for the actual time these employees worked each day,
12 including overtime hours. As a result DEFENDANT was able to and did in fact unlawfully, and
13 unilaterally alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and
14 the members of the CALIFORNIA CLASS in order to avoid paying these employees the
15 applicable overtime compensation for overtime worked and to avoid paying these employees for
16 missed meal breaks. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
17 time to time, forfeited time worked by working without their time being accurately recorded and
18 without compensation at the applicable overtime rates.

19 10. The mutability of the timekeeping system also allowed DEFENDANT to alter
20 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
21 timekeeping system so as to create the appearance that PLAINTIFF and other CALIFORNIA
22 CLASS Members clocked out for a thirty (30) minute meal break when in fact the employees
23 were not at all times provided an off-duty meal break. This practice is a direct result of
24 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
25 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks

26 11. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
28 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other

1 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANTS
2 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
3 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
4 second off-duty meal period each workday in which these employees were required by
5 DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
6 CLASS Members therefore forfeited meal breaks without additional compensation and in
7 accordance with DEFENDANTS' strict corporate policy and practice

8 12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
9 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
10 without being provided ten (10) minute rest periods. Further, these employees were denied their
11 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
12 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
13 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
14 minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other
15 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.
16 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS
17 Members were periodically denied their proper rest periods by DEFENDANTS and
18 DEFENDANT'S managers.

19 13. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all
20 wages owed to them, and/or missed meal and rest breaks, DEFENDANT also failed to provide
21 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
22 wage statements which failed to show, among other things, the time worked, including, work
23 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek,
24 and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226
25 provides that every employer shall furnish each of his or her employees with an accurate
26 itemized wage statement in writing showing, among other things, gross wages earned and all
27 applicable hourly rates in effect during the pay period and the corresponding amount of time
28 worked at each hourly rate. Aside, from the violations listed above in this paragraph,

1 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
2 requirements under California Labor Code 226 *et seq.* As a result, from time to time
3 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
4 wage statements which violated Cal. Lab. Code § 226.

5 14. DEFENDANT as a matter of corporate policy, practice and procedure,
6 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
7 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
8 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
9 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
10 are required to indemnify employees for all expenses incurred in the course and scope of their
11 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
12 her employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
14 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
15 believed them to be unlawful."

16 15. In the course of their employment, PLAINTIFF and other CALIFORNIA
17 CLASS Members as a business expense, were required by DEFENDANT to use their own
18 personal cellular phones, and to clean their own uniforms, as a result of and in furtherance of
19 their job duties as employees for DEFENDANT but were not reimbursed or indemnified by
20 DEFENDANT for the cost associated with the use of their personal cellular phones and the
21 cleaning of their uniforms for DEFENDANT'S benefit. Specifically, PLAINTIFF and other
22 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
23 phones to for work related issues, and were required to regularly clean their uniforms. As a
24 result, in the course of their employment with DEFENDANT the PLAINTIFF and other
25 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
26 included, but were not limited to, costs related to the use of their personal cellular phones and
27 the cleaning of their uniforms, all on behalf of and for the benefit of DEFENDANT.
28

1 16. During the CALIFORNIA CLASS period, pursuant to DEFENDANT's company
2 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
3 forfeit gratuities left for them by customers to DEFENDANT's agents who provided no service
4 to the customers that resulted in the gratuity. DEFENDANT routinely added gratuity tips and
5 service charges to its food and beverage banquet bills. These gratuities and service charges
6 reasonably appear to be gratuities for the service staff. It is typical and customary in the
7 hospitality industry that establishments impose gratuity charges on the food and beverage bill.
8 Thus, when customers paid these charges, it is reasonable for them to have believed they were
9 gratuities to be paid to the service staff. Indeed, because many of these charges are depicted to
10 customers, and the custom in the food and beverage industry that gratuities are paid for food and
11 beverage service, customers paid these charges reasonably believing they were remitted to the
12 service staff. However, DEFENDANT has not remitted the total proceeds of these gratuities to
13 the non-managerial employees who serve the food and beverages. Instead, DEFENDANT has a
14 policy and practice of retaining for itself a portion of these gratuities and/or using a portion of
15 these gratuities to pay managers or other non-service employees. As a result, PLAINTIFF and
16 CALIFORNIA CLASS Members have not received the total proceeds of the gratuities, to which
17 they are entitled to under California law

18 17. DEFENDANT is generally in the business of owning and operating a hotel that
19 includes a restaurant/banquet hall. In addition, DEFENDANT provides banquet services to
20 large groups, such as birthday parties and other banquet events. During the CALIFORNIA
21 CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were in the "chain
22 of service" and earned gratuities based on their service for their customers. However,
23 PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit portions of their
24 gratuities, which said gratuities were kept by DEFENDANT and their agents who were not in
25 the chain of service from which the gratuity resulted. PLAINTIFF and other CALIFORNIA
26 CLASS Members contend that any gratuities kept by DEFENDANT were illegal and in
27 violation of California law because PLAINTIFF and other CALIFORNIA CLASS Members,
28 not DEFENDANT, provided the service for to whom the gratuity should have been paid.

1 18. California Labor Code § 351 establishes the requirements for an employer
2 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
3 employees. California Labor Code § 351 expressly prohibits employers and their agents from
4 collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e)
5 defines the term “gratuity” as including any money that has been paid or given or left for an
6 employee by a patron of a business over and above the actual amount due the business for
7 services rendered or for goods, food, drink or articles sold or served to such patron. Labor Code
8 § 353 requires employers to keep accurate records of all gratuities they receive, directly or
9 indirectly.

10 19. Although tip pooling is not expressly prohibited by the Labor Code, employees
11 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
12 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain of
13 service,” DEFENDANT has violated and continue to violate the legal requirements for handling
14 pooled tips and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No.
15 A148513 (Court of Appeals of California, First District, Division Two.).

16 20. By reason of this uniform conduct applicable to PLAINTIFF and all
17 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
18 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
19 *seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
20 accurately calculate and record the correct overtime rate for the overtime worked by
21 PLAINTIFF and other CALIFORNIA CLASS Members. The proper calculation of these
22 employees’ overtime hour rates is the DEFENDANT’s burden. As a result of DEFENDANT’s
23 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
24 calculate and/or pay all required overtime compensation for work performed by the members of
25 the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
26 thereunder as herein alleged.

27 21. Specifically as to PLAINTIFF’S pay, PLAINTIFF was from time to time unable
28 to take off duty meal and rest breaks and was not fully relieved of duty for his meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
3 provide PLAINTIFF with a second off-duty meal period each workday in which he was
4 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
5 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
6 corporate policy and practice. To date, DEFENDANT has not fully paid PLAINTIFF the
7 overtime compensation still owed to him or any penalty wages owed to them under Cal. Lab.
8 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum
9 or value of \$75,000.

10 **JURISDICTION AND VENUE**

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

15 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
16 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
17 maintained offices and facilities in this County and/or conducts substantial business in this
18 County, and (ii) committed the wrongful conduct herein alleged in this County against members
19 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

20 21 **THE CALIFORNIA CLASS**

22
23 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
25 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
26 individuals who are or previously were employed by Defendant in California and classified as
27 non-exempt employees (the "CALIFORNIA CLASS") at any time between April 6, 2016 and
28 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in

1 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
2 dollars (\$5,000,000.00).

3 25. On April 6, 2020, due to the impact of the COVID-19 pandemic on California's
4 judicial branch, the Judicial Council of California issued Emergency Rule Number 9 which
5 states that, "Notwithstanding any other law, the statutes of limitation for civil causes of action
6 are tolled from April 6, 2020, until 90 days after the Governor declare that the state of
7 emergency related COVID-19 pandemic is lifted."

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

11 27. The California Legislature has commanded that "all wages... ..earned by any
12 person in any employment are due and payable twice during each calendar month, on days
13 designated in advance by the employer as the regular paydays", and further that "[a]ny work in
14 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
15 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
16 for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
17 however, is statutorily authorized to "establish exemptions from the requirement that an
18 overtime rate of compensation be paid... ..for executive, administrative, and professional
19 employees, provided [inter alia] that the employee is primarily engaged in duties that meet the
20 test of the exemption, [and] customarily and regularly exercises discretion and independent
21 judgment in performing those duties..." (Lab. Code § 510(a).) Neither the PLAINTIFF nor the
22 other members of the CALIFORNIA CLASS and/or the CALIFORNIALABOR SUB-CLASS
23 qualify for exemption from the above requirements.

24 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay
28 for time worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even

1 though DEFENDANT enjoyed the benefit of this work, required employees to perform this
2 work and permitted or suffered to permit this work.

3 29. DEFENDANT have the legal burden to establish that each and every
4 CALIFORNIA CLASS Member is paid for all time worked. DEFENDANT, however, as a
5 matter of uniform and systematic policy and procedure failed to have in place during the
6 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure
7 that each and every CALIFORNIA CLASS Member is paid for all time worked, so as to satisfy
8 their burden. This common business practice applicable to each and every CALIFORNIA
9 CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive
10 under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages,
11 and reliance are not elements of this claim.

12 30. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
13 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
14 employee for all time worked at the applicable rate, as required by California Labor Code §§
15 204 and 510, *et seq.*

16 31. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
17 CLASS Members is impracticable.

18 32. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
19 California law by:

- 20 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
21 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
22 company policies, practices and procedures that failed to pay all wages due the
23 CALIFORNIA CLASS for all minimum wages and overtime worked.
- 24 b. Committing an act of unfair competition in violation of the California Unfair
25 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
26 provide mandatory meal and/or rest breaks to PLAINTIFF and the
27 CALIFORNIA CLASS members;
28

1 33. The Class Action meets the statutory prerequisites for the maintenance of a Class
2 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 3 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
4 joinder of all such persons is impracticable and the disposition of their claims as
5 a class will benefit the parties and the Court;
- 6 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
7 raised in this Complaint are common to the CALIFORNIA CLASS will apply
8 uniformly to every member of the CALIFORNIA CLASS;
- 9 c. The claims of the representative PLAINTIFF are typical of the claims of each
10 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
11 of the CALIFORNIA CLASS, was subjected to the uniform employment
12 practices of DEFENDANTS and was a non-exempt employee paid on an hourly
13 basis and paid additional non-discretionary incentive wages who was subjected
14 to the DEFENDANT'S practice and policy which failed to pay the correct rate of
15 overtime wages due to the CALIFORNIA CLASS for all overtime worked by the
16 CALIFORNIA CLASS and thereby systematically under pays overtime
17 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic
18 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
19 members of the CALIFORNIA CLASS were and are similarly or identically
20 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
21 misconduct engaged in by DEFENDANT; and
- 22 d. The representative PLAINTIFF will fairly and adequately represent and protect
23 the interest of the CALIFORNIA CLASS, and has retained counsel who are
24 competent and experienced in Class Action litigation. There are no material
25 conflicts between the claims of the representative PLAINTIFF and the members
26 of the CALIFORNIA CLASS that would make class certification inappropriate.
27 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
28 CALIFORNIA CLASS Members.

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

3 a. Without class certification and determination of declaratory, injunctive, statutory
4 and other legal questions within the class format, prosecution of separate actions
5 by individual members of the CALIFORNIA CLASS will create the risk of:

6 i. Inconsistent or varying adjudications with respect to individual members
7 of the CALIFORNIA CLASS which would establish incompatible
8 standards of conduct for the parties opposing the CALIFORNIA CLASS;
9 and/or;

10 ii. Adjudication with respect to individual members of the CALIFORNIA
11 CLASS which would as a practical matter be dispositive of interests of
12 the other members not party to the adjudication or substantially impair or
13 impede their ability to protect their interests.

14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
15 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
16 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
17 DEFENDANTS uniformly failed to pay all wages due, including the correct
18 overtime rate, for all time worked by the members of the CALIFORNIA CLASS
19 as required by law;

20 i. With respect to the First Cause of Action, the final relief on behalf of the
21 CALIFORNIA CLASS sought does not relate exclusively to restitution
22 because through this claim PLAINTIFF seek declaratory relief holding
23 that the DEFENDANT's policy and practices constitute unfair
24 competition, along with declaratory relief, injunctive relief, and incidental
25 equitable relief as may be necessary to prevent and remedy the conduct
26 declared to constitute unfair competition;

27 c. Common questions of law and fact exist as to the members of the CALIFORNIA
28 CLASS, with respect to the practices and violations of California law as listed

1 above, and predominate over any question affecting only individual
2 CALIFORNIA CLASS Members, and a Class Action is superior to other
3 available methods for the fair and efficient adjudication of the controversy,
4 including consideration of:

5 i. The interests of the members of the CALIFORNIA CLASS in
6 individually controlling the prosecution or defense of separate actions in
7 that the substantial expense of individual actions will be avoided to
8 recover the relatively small amount of economic losses sustained by the
9 individual CALIFORNIA CLASS Members when compared to the
10 substantial expense and burden of individual prosecution of this
11 litigation;

12 ii. Class certification will obviate the need for unduly duplicative litigation
13 that would create the risk of:

14 1. Inconsistent or varying adjudications with respect to individual
15 members of the CALIFORNIA CLASS, which would establish
16 incompatible standards of conduct for the DEFENDANT; and/or;

17 2. Adjudications with respect to individual members of the
18 CALIFORNIA CLASS would as a practical matter be dispositive
19 of the interests of the other members not parties to the
20 adjudication or substantially impair or impede their ability to
21 protect their interests;

22 iii. In the context of wage litigation, because a substantial number of
23 individual CALIFORNIA CLASS Members will avoid asserting their
24 legal rights out of fear of retaliation by DEFENDANT, which may
25 adversely affect an individual's job with DEFENDANT or with a
26 subsequent employer, the Class Action is the only means to assert their
27 claims through a representative; and
28

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

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

- 8 a. The questions of law and fact common to the CALIFORNIA CLASS
9 predominate over any question affecting only individual CALIFORNIA CLASS
10 Members because the DEFENDANT's employment practices are uniform and
11 systematically applied with respect to the CALIFORNIA CLASS.
- 12 b. A Class Action is superior to any other available method for the fair and efficient
13 adjudication of the claims of the members of the CALIFORNIA CLASS because
14 in the context of employment litigation a substantial number of individual
15 CALIFORNIA CLASS Members will avoid asserting their rights individually
16 out of fear of retaliation or adverse impact on their employment;
- 17 c. The members of the CALIFORNIA CLASS are so numerous that it is
18 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 19 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
20 obtain effective and economic legal redress unless the action is maintained as a
21 Class Action;
- 22 e. There is a community of interest in obtaining appropriate legal and equitable
23 relief for the acts of unfair competition, statutory violations and other
24 improprieties, and in obtaining adequate compensation for the damages and
25 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
26 CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
6 respect to the CALIFORNIA CLASS as a whole;
- 7 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
8 business records of DEFENDANT; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANT as to the members of the
12 CALIFORNIA CLASS.

13 36. DEFENDANT maintains records from which the Court can ascertain and
14 identify by job title each of DEFENDANT's employees who as have been systematically,
15 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
16 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
17 any additional job titles of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
20 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
21 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
22 SUB-CLASS") at any time during the period of April 6, 2017 and ending on the date as
23 determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to
24 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
25 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

26 38. DEFENDANT, as a matter of company policy, practice and procedure, and in
27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
28 requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 willfully, engaged in a practice whereby DEFENDANT failed to correctly pay for all time
2 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
3 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
4 this work and permitted or suffered to permit this overtime work. DEFENDANT has uniformly
5 denied these CALIFORNIA LABOR SUB-CLASS Members minimum and overtime wages in
6 order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
7 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
8 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

9 39. DEFENDANT maintains records from which the Court can ascertain and
10 identify by name and job title, each of DEFENDANT's employees who have been
11 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,
12 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint
13 to include any additional job titles of similarly situated employees when they have been
14 identified.

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

17 41. Common questions of law and fact exist as to members of the CALIFORNIA
18 LABOR SUB-CLASS, including, but not limited, to the following:

- 19 a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
20 compensation to members of the CALIFORNIA LABOR SUB-CLASS in
21 violation of the California Labor Code and California regulations and the
22 applicable California Wage Order;
- 23 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled
24 to overtime compensation for overtime worked under the overtime pay
25 requirements of California law;
- 26 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
28 thirty (30) minute meal breaks and rest periods;

- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- e. Whether DEFENDANT failed to reimburse PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS for business expenses incurred in furtherance and for the benefit DEFENDANT's business;
- f. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- g. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- h. Whether DEFENDANT's conduct was willful.

42. DEFENDANT, as a matter of company policy, practice and procedure, failed to accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the time worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT according to uniform and systematic company procedures as alleged herein above. This business practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

43. DEFENDANT 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 failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the

correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;

- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing time worked at by the employee;
- e. 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. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
3 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
4 employee paid on an hourly basis and paid additional non-discretionary incentive
5 wages who was subjected to the DEFENDANT's practice and policy which
6 failed to pay the correct rate of overtime wages due to the CALIFORNIA
7 LABOR SUB-CLASS for all overtime worked. PLAINTIFF sustained economic
8 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
9 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
10 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
11 of misconduct engaged in by DEFENDANT; and
- 12 d. The representative PLAINTIFF will fairly and adequately represent and protect
13 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
14 counsel who are competent and experienced in Class Action litigation. There are
15 no material conflicts between the claims of the representative PLAINTIFF and
16 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
17 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
18 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
19 Members.

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

- 22 a. Without class certification and determination of declaratory, injunctive, statutory
23 and other legal questions within the class format, prosecution of separate actions
24 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
25 the risk of:
- 26 i. Inconsistent or varying adjudications with respect to individual members
27 of the CALIFORNIA LABOR SUB-CLASS which would establish
28

1 incompatible standards of conduct for the parties opposing the
2 CALIFORNIA LABOR SUB-CLASS; or

3 ii. Adjudication with respect to individual members of the CALIFORNIA
4 LABOR SUB-CLASS which would as a practical matter be dispositive of
5 interests of the other members not party to the adjudication or
6 substantially impair or impede their ability to protect their interests.

7 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
8 refused to act on grounds generally applicable to the CALIFORNIA LABOR
9 SUB-CLASS, making appropriate class-wide relief with respect to the
10 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
11 uniformly failed to pay all wages due, including the correct overtime rate, for all
12 overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as
13 required by law;

14 c. Common questions of law and fact predominate as to the members of the
15 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
16 violations of California Law as listed above, and predominate over any question
17 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
18 Class Action is superior to other available methods for the fair and efficient
19 adjudication of the controversy, including consideration of:

20 i. The interests of the members of the CALIFORNIA LABOR SUB-
21 CLASS in individually controlling the prosecution or defense of separate
22 actions in that the substantial expense of individual actions will be
23 avoided to recover the relatively small amount of economic losses
24 sustained by the individual CALIFORNIA LABOR SUB-CLASS
25 Members when compared to the substantial expense and burden of
26 individual prosecution of this litigation;

27 ii. Class certification will obviate the need for unduly duplicative litigation
28 that would create the risk of:

- 1 1. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA LABOR SUB-CLASS, which
3 would establish incompatible standards of conduct for the
4 DEFENDANT; and/or,
5 2. Adjudications with respect to individual members of the
6 CALIFORNIA LABOR SUB-CLASS would as a practical matter
7 be dispositive of the interests of the other members not parties to
8 the adjudication or substantially impair or impede their ability to
9 protect their interests;
10 iii. In the context of wage litigation because a substantial number of
11 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
12 asserting their legal rights out of fear of retaliation by DEFENDANT,
13 which may adversely affect an individual’s job with DEFENDANT or
14 with a subsequent employer, the Class Action is the only means to assert
15 their claims through a representative; and,
16 iv. A class action is superior to other available methods for the fair and
17 efficient adjudication of this litigation because class treatment will
18 obviate the need for unduly and unnecessary duplicative litigation that is
19 likely to result in the absence of certification of this action pursuant to
20 Cal. Code of Civ. Proc. § 382.
21 46. This Court should permit this action to be maintained as a Class Action pursuant
22 to Cal. Code of Civ. Proc. § 382 because:
23 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
24 CLASS predominate over any question affecting only individual CALIFORNIA
25 LABOR SUB-CLASS Members;
26 b. A Class Action is superior to any other available method for the fair and efficient
27 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
28 CLASS because in the context of employment litigation a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
2 their rights individually out of fear of retaliation or adverse impact on their
3 employment;

4 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
5 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
6 CLASS before the Court;

7 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
8 not be able to obtain effective and economic legal redress unless the action is
9 maintained as a Class Action;

10 e. There is a community of interest in obtaining appropriate legal and equitable
11 relief for the acts of unfair competition, statutory violations and other
12 improprieties, and in obtaining adequate compensation for the damages and
13 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
14 LABOR SUB-CLASS;

15 f. There is a community of interest in ensuring that the combined assets of
16 DEFENDANT are sufficient to adequately compensate the members of the
17 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

18 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
19 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
20 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

21 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
23 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
24 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
25 PERIOD; and

26 i. Class treatment provides manageable judicial treatment calculated to bring an
27 efficient and rapid conclusion to all litigation of all wage and hour related claims
28

arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

47. 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.

48. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

49. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. 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 make 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. (Cal. Bus. & Prof. Code § 17203).

50. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197 & 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

51. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
6 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
7 other members of the CALIFORNIA CLASS, minimum wages, wages due for overtime
8 worked, and failed to provide the required amount of overtime compensation, pursuant to the
9 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
10 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
11 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
12 withheld.

13 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
14 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
15 other members of the CALIFORNIA CLASS to be underpaid during their employment with
16 DEFENDANT.

17 54. By the conduct alleged herein, DEFENDANT's practices were also unfair and
18 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
19 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

20 55. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
21 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
22 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
23 for each workday in which a second off-duty meal period was not timely provided for each ten
24 (10) hours of work.

25 56. PLAINTIFF further demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
27 was not timely provided as required by law.
28

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

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

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

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

61. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGES
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
Defendants)**

62. 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.

63. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

67. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

68. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

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

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

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

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

19 73. DEFENDANT knew or should have known that PLAINTIFFS and the other
20 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
21 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
22 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
23 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
24 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
25 correct minimum wages for their time worked.

26 74. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
28 time worked and provide them with requisite compensation, DEFENDANT acted and continue
to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal

1 rights, or the consequences to them, and with the despicable intent of depriving them of their
2 property and legal rights, and otherwise causing them injury in order to increase company
3 profits at the expense of these employees.

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

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME COMPENSATION** 17 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

18 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
19 **Defendants)**

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

23 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
26 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
27 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
28 hours in any workweek.

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

3 79. Cal. Lab. Code § 510 further provides that employees in California shall not be
4 employed more than eight (8) hours per workday and/or more than forty (40) hours per
5 workweek unless they receive additional compensation beyond their regular wages in amount
6 specified by law.

7 80. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
8 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
9 Code § 1198 further states that the employment of an employee for longer hours than those
10 fixed by the Industrial Welfare Commission is unlawful.

11 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
13 DEFENDANT and were not paid for all the time they worked, including overtime work.

14 82. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
15 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
16 result of implementing a uniform policy and practice that failed to accurately record overtime
17 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
18 and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA
19 LABOR SUB-CLASS for overtime worked, including, the work performed in excess of eight
20 (8) hours in a workday and/or forty (40) hours in any workweek.

21 83. In committing these violations of the California Labor Code, DEFENDANT acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other
24 applicable laws and regulations.

25 84. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
27 receive full compensation for all overtime worked.

28 85. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
from the overtime requirements of the law. None of these exemptions are applicable to
PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
2 to a valid collective bargaining agreement that would preclude the causes of action contained
3 herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of themselves and the
4 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
5 non-waivable rights provided by the State of California.

6 86. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
8 they were entitled to, constituting a failure to pay all earned wages.

9 87. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
11 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
12 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
14 to accurately record and pay using the applicable overtime rate as evidenced by
15 DEFENDANT's business records and witnessed by employees.

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

22 89. DEFENDANT knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
24 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
25 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
26 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
27 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
28 applicable overtime rate.

90. In performing the acts and practices herein alleged in violation of California labor
laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for

1 all time worked and provide them with the requisite overtime compensation, DEFENDANT
2 acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and
3 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter
4 disregard for their legal rights, or the consequences to them, and with the despicable intent of
5 depriving them of their property and legal rights, and otherwise causing them injury in order to
6 increase company profits at the expense of these employees.

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

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

20 **(Cal. Lab. Code §§ 226.7 & 512)**

21 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
22 **Defendants)**

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

26 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
27 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
28 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

1 did not prevent these employees from being relieved of all of their duties for the legally required
2 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
4 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
5 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
6 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
7 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
8 therefore forfeited meal breaks without additional compensation and in accordance with
9 DEFENDANT's strict corporate policy and practice.

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

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

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

20 **(Cal. Lab. Code §§ 226.7 & 512)**

21 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
22 **Defendants)**

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

26 97. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
27 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
28 Further, these employees were denied their first rest periods of at least ten (10) minutes for some

1 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
2 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
3 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
4 more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
5 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
6 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
7 denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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

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

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

18 **(Cal. Lab. Code § 226)**

19 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and
20 against all Defendants)**

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

24 101. Cal. Labor Code § 226 provides that an employer must furnish employees withan
25 "accurate itemized" statement in writing showing:

- 26 a. Gross wages earned;
- 27 b. Total hours worked by the employee, except for any employee whose
28 compensation is solely based on a salary and who is exempt from payment of

overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

102. When PLAINTIFF and other CALIFORNIA CLASS Members were not paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct time worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time

1 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
2 wage statements which violated Cal. Lab. Code § 226.

3 103. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
4 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
5 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
6 expended calculating the time worked and the amount of employment taxes which were not
7 properly paid to state and federal tax authorities. These damages are difficult to estimate.
8 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
9 may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in
10 which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
11 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the
12 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and
13 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

14
15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN DUE**

17 **(Cal. Lab. Code §§201, 202, 203)**

18 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
19 **Defendants)**

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

23 105. Cal. Lab. Code § 200 provides that:

24 As used in this article:(a) "Wages" includes all amounts for labor performed by
25 employees of every description, whether the amount is fixed or ascertained by the
26 standard of time, task, piece, Commission basis, or other method of calculation.
27 (b) "Labor" includes labor, work, or service whether rendered or performed under
28 contract, subcontract, partnership, station plan, or other agreement if the labor to
be paid for is performed personally by the person demanding payment.

1 106. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges
2 an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.”

4 107. Cal. Lab. Code § 202 provides, in relevant part, that:

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

14 108. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
15 SUB-CLASS Members’ employment contract.

16 109. Cal. Lab. Code § 203 provides:

17 If an employer willfully fails to pay, without abatement or reduction, in
18 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
19 who is discharged or who quits, the wages of the employee shall continue as a
20 penalty from the due date thereof at the same rate until paid or until an action
21 therefor is commenced; but the wages shall not continue for more than 30 days.

22 110. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
23 CLASS Members terminated and DEFENDANT have not tendered payment of overtime wages,
24 to these employees who actually worked overtime, as required by law.

25 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
26 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
27 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
28 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
costs as allowed by law.

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EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

112. 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.

113. 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.

114. At all relevant times herein, DEFENDANT 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 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones and costs associated with cleaning their uniforms, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues, and were required by DEFENDANT'S written policy to clean their uniforms on a regular basis. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones and cleaning their uniforms for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

1 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
2 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
3 do under the laws and regulations of California.

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

8 **NINTH CAUSE OF ACTION**

9 **FAILURE TO PAY STATUTORY GRATUITIES**

10 **(Cal. Lab. Code § 351 et seq.)**

11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
12 **Defendants)**

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

16 117. DEFENDANT's conduct, as set forth above, in failing to remit to non-
17 managerial service employees the total proceeds of gratuities added to banquet customers' bills
18 constitutes a violation of California Labor Code Section 351. This violation is enforceable
19 pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200 et seq.
20 DEFENDANT's conduct constitutes unlawful, unfair, and/or fraudulent business acts or
21 practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting
22 to the non-managerial service employees the total gratuities that were charged to customers.

23 118. As a proximate result of the aforementioned violations, PLAINTIFF and
24 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
25 proof at trial, including the loss of gratuities to which they were entitled and seek all wages
26 earned and due, interest, penalties, expenses and costs of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a 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 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's 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 compensatory damages for minimum wages, overtime compensation, gratuities, unreimbursed expenses, and other 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. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- 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 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

1 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
2 an award of costs for violation of Cal. Lab. Code § 226; and

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

6 3. On all claims:

- 7 a. An award of interest, including prejudgment interest at the legal rate;
8 b. Such other and further relief as the Court deems just and equitable; and
9 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
10 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
11 and/or §2802.

12 DATED: June__ 2020

13
14 **ZAKAY LAW GROUP, APLC**

15
16 By: _____
17 Shani O. Zakay
18 Attorney for Plaintiff

19 **DEMAND FOR A JURY TRIAL**

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

21 DATED: June__, 2020

22
23 **ZAKAY LAW GROUP, APLC**

24
25 By: _____
26 Shani O. Zakay
27 Attorney for Plaintiff
28

EXHIBIT 4

Tesla Stone

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, September 3, 2020 5:57 PM
To: Tesla Stone
Subject: Thank you for your Court Complaint Submission

09/03/2020 05:57:13 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