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RAUL NUNEZ

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

RAUL NUNEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

TK SERVICES, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No. BC682512

*[Assigned for All Purposes to Hon. Kenneth R.
Freeman, SSC-14]*

**DECLARATION OF SCOTT M.
LIDMAN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: June 15, 2021
Time: 11:00 a.m.
Dept.: SSC-14

Action Filed: November 6, 2017
Trial Date: None Set

1 I, SCOTT M. LIDMAN, declare as follows:

2 1. I am a shareholder and principal of the law firm Lidman Law, APC, and counsel for the
3 named Plaintiff Raul Nunez ("Plaintiff") and the proposed Settlement Class in the above-captioned
4 matter. I am a member in good standing of the bar of the State of California and am admitted to practice
5 in this Court. I have personal knowledge of the facts stated in this declaration and could testify
6 competently to them if called upon to do so.

7 2. I am a 1998 graduate of Santa Clara University School of Law, where I graduated *summa*
8 *cum laude*. During law school, I worked as a summer associate for the international employment law
9 firm of Littler Mendelson, P.C., located in Los Angeles, California.

10 3. Since graduating from law school, my practice has focused exclusively on employment
11 litigation. In September 1998, I began working as an associate attorney at the international law firm of
12 Littler Mendelson P.C., at its Los Angeles office, which according to its website is the largest law firm
13 in the world exclusively devoted to representing management in employment, employee benefits and
14 labor law matters.

15 4. In 2000, I left Littler Mendelson to work at the Los Angeles office of Jones Day, which
16 was at the time one of the largest international firms in the world. During my employment at Jones
17 Day, I worked exclusively in the labor and employment department. In or around 2003, I went to work
18 at the law firm of Loeb & Loeb, again working exclusively in the Labor & Employment department. In
19 2008, I returned to Littler Mendelson, was promoted to Shareholder in 2009, and from 2008 until the
20 end of 2017, I practiced exclusively labor and employment law, with a strong emphasis and most of my
21 time working on wage and hour class actions venued in both state and federal courts. During that time
22 and my legal career in general, I also worked on a number of single and multi-plaintiff wage and hour
23 matters as well.

24 5. During my employment at Littler Mendelson, I played a significant role in the class
25 actions that I was staffed on, and ran many on my own both as an Of Counsel and as a Shareholder. In
26 particular, I received a wide-array of wage and hour class action experience performing the following
27 types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions from state court
28

1 to federal court; drafting and responding to written discovery; drafting and opposing discovery related
2 motions; arguing discovery related motions; drafting motions to consolidate related matters;
3 interviewing putative class members and obtaining declarations in connection with class certification;
4 drafting oppositions to motions for class certification; drafting motions for decertification following
5 class certification; conducting exposure analyses to assess the strengths and weaknesses of asserted
6 claims, the likelihood of prevailing at class certification and potential damages resulting from such
7 claims; drafting mediation briefs; serving as the primary contact to in-house counsel; deposing named
8 plaintiffs and putative class members; deposing retained expert witnesses; and defending the depositions
9 of corporate witnesses. I also was involved in the negotiations and settlements of many large wage and
10 hour class actions. In short, I played an integral role in all aspects of litigation from the inception of a
11 matter through and beyond class certification. I also supervised the work of several junior attorneys
12 who were staffed on the same wage and hour class actions.

13 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
14 actions that I performed substantial work on while I was a shareholder at Littler Mendelson:

- 15 ► *Ortega v. J.B. Hunt Transport, Inc.*, Case No. 07-cv-8336-RGK-AFMx, United
16 States District Court, Central District of California, Honorable Gary Klausner,
17 presiding¹.
- 18 ► *Aceves v. J.B. Hunt Transport, Inc.*, Case No. CIVDS1306133, California
19 Superior Court, County of San Bernardino, Honorable Michael Sachs, presiding.
- 20 ► *Moreno v. J.B. Hunt Transport, Inc.*, Case No. BC388612, California Superior
21 Court, County of Los Angeles, Honorable Mel Red Recana, presiding.
- 22 ► *Newcomb v. J.B. Hunt Transport, Inc.*, Case No. RG16815734, California
23 Superior Court, County of Alameda, Honorable Winifred Smith, presiding.
- 24 ► *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. 12-cv-08590-PA-MAN,
25 United States District Court, Central District of California, Honorable Percy
26 Anderson, presiding.

27 ¹ My work on this matter including proceedings not only in District Court, but also work before the United States Court of
28 Appeals for the Ninth Circuit as well as the United States Supreme Court.

- 1 ► *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. BC388612, California
2 Superior Court, County of Los Angeles, Honorable Elihu Berle, presiding.²
- 3 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
4 States District Court, Central District of California, Honorable Percy Anderson,
5 presiding.
- 6 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
7 States District Court, Central District of California, Honorable Percy Anderson,
8 presiding.
- 9 ► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
10 Superior Court, County of Los Angeles, Honorable Jane Johnson, presiding.³
- 11 ► *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
12 Superior Court, County of Orange, Honorable Thierry Patrick Colaw, presiding.
- 13 ► *Sakkab v. Luxottica Retail North America, Inc.*, Case No. 12-cv-00436-GPC-
14 KSC, United States District Court, Southern District of California.⁴
- 15 ► *Page v. Oakley, Inc.*, Case No. FCS041512, California Superior Court, County
16 of Solano, Honorable Paul Berman, presiding.
- 17 ► *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00731617-CU-OE-CJC California
18 Superior Court, County of Orange, Honorable William Claster, presiding.
- 19 ► *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00723846-CU-DE-CXC, California
20 Superior Court, County of Orange, Honorable William Claster, presiding.
- 21 ► *Sierra v. Oakley, Inc.*, Case No. 13-cv-00319-AG-JPR, United States District
22 Court, Central District of California, Honorable Andrew Guilford, presiding.⁵
- 23
- 24
- 25

26 ² My work on this matter included proceedings not only in the trial court, but also before the California Courts of Appeal
27 and the California Supreme Court.

28 ³ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

⁴ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

⁵ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
2 States District Court, Central District of California, Honorable Margaret Morrow,
3 presiding.
- 4 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
5 States District Court, Central District of California, Honorable Margaret Morrow,
6 presiding.
- 7 ▶ *Khelghatian v. Comerica Bank, et al.*, Case No. 11-cv-7689-DSF-FFMx, United
8 States District Court, Southern District of California, Honorable John A.
9 Houston, presiding.
- 10 ▶ *Babasa v. Comerica Bank, et al.*, Case No. 11-cv-0595-JAH-BGS, United States
11 District Court, Central District of California, Honorable Margaret Morrow,
12 presiding.
- 13 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
14 District Court, Central District of California, Honorable Margaret Morrow,
15 presiding.
- 16 ▶ *Khalili v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
17 States District Court, Northern District of California.
- 18 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
19 California Superior Court, County of San Diego, Honorable Jeffrey B. Barton,
20 presiding.
- 21 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
22 Court, County of Santa Clara.
- 23 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior
24 Court, County of Los Angeles, Honorable Terry Green, presiding.
- 25 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
26 Court, County of San Francisco.

1 ► *Smith v. Werner Enterprises*, Case No. 15-cv-02978-RS, United States District
2 Court, Northern District of California, Honorable Richard Seeborg, presiding.

3 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to open my own
4 law firm, Lidman Law, APC, to represent employees with work-related claims, including primarily
5 wage and hour claims and almost exclusively on a class-action basis. I am the President and Shareholder
6 of Lidman Law. Currently, over ninety percent (90%) of my practice is dedicated exclusively to the
7 prosecution of wage and hour class actions, and I am currently responsible for prosecuting over sixty-
8 five (65) wage and hour class actions filed in State courts throughout California, with several of them
9 having been removed to Federal courts. I believe that my professional experience renders me more than
10 qualified to serve as class counsel in this lawsuit involving claims of underpaid overtime and minimum
11 wages, meal and rest period violations, and derivative penalty claims. Not only have I litigated dozens
12 of wage and hour cases throughout my career involving similar claims, including the wage and hour
13 class actions identified above, I have litigated similar claims from both plaintiff and defense
14 perspectives. As a result, I am able to realistically assess and evaluate the facts and legal arguments
15 that can be made in pursuit and defense of similar wage and hour claims, as well as those facts and
16 arguments in support and in opposition to class certification. Consequently, I am able to appreciate the
17 significant risks, uncertainties, and delay involved in wage and hour class action litigation.

18 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
19 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
20 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
21 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-
22 2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge
23 William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412,
24 California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina*
25 *v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los Angeles,
26 Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case
27 No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F.

Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the Honorable Judge Philip S. Gutierrez presiding.

9. As co-lead counsel for Plaintiff Nunez and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is a favorable result for the Settlement Class Members under the circumstances presented.

1 10. Defendant TK Services, Inc. (hereinafter “TK Services” or “Defendant”) manufactures
2 what it represents are the most dependable and durable refrigeration and heating units (temperature
3 control units) for truckers, trailers, rail cars and ocean-going containers around the globe. TK Services
4 further provides maintenance and other services related to its temperature control units it manufactures.
5 TK Services maintains shops/branches/locations at which it manufactures, sells and services its
6 temperature control units in California in Los Angeles, San Diego, Fontana, Stockton, Redding, San
7 Leandro and Sacramento. On November 6, 2017, Plaintiff filed a putative class action complaint
8 against TK Services in Los Angeles County Superior Court. Plaintiff’s primary allegations are that
9 TK Services: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed;
10 (3) failed to pay all wages at the agreed-upon rate; (4) failed to provide all legally required meal
11 periods; (5) failed to pay all final wages upon separation of employment; and (6) engaged in unlawful
12 business practices. After the Parties agreed to attend a private mediation, they exchanged information
13 and data, and also agreed to expand the scope of the mediation. Specifically, the Parties agreed that
14 they would exchange data and mediation additional claims for: (1) failure to authorize and permit all
15 legally required rest periods; (2) failure to provide accurate, itemized wage statements and (3) liability
16 for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).⁶

17 11. Throughout the litigation, Plaintiff propounded two sets of written discovery, including
18 without limitation, Special Interrogatories, Form Interrogatories General and Employment, and
19 Requests for Production. TK Services responded to the first set of written discovery and produced
20 nearly 20,000 pages of documents and information pertaining to Plaintiff and the putative class. Further,
21 the Parties completed the *Belaire-West* notice and TK Services produced the contact information for the
22 putative class members that did not opt-out. Additionally, over the course of two days, Plaintiff took
23 the deposition of TK Services’ Person Most Knowledgeable. After agreeing to participate in private
24

25 ⁶ As part of this Motion, Plaintiff seeks to amend his operative pleading by way of a proposed First
26 Amended Class and Representative Action Complaint (“FAC”) to be filed as part of the Settlement,
27 which pleads all of the causes of action mediated and settlement with TK Services, including claims for
28 (i) failure to authorize and permit all legally required rest periods; (ii) failure to provide accurate,
itemized wage statements; and (iii) civil penalties under PAGA. See the proposed FAC attached to the
Stipulation of Settlement (“Settlement”) as Exhibit A.

mediation, TK Services informally produced a class list, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. After the detailed review of the payroll and time records and other documents and policies produced by TK Services, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and TK Services' defenses thereto, if a settlement could not be reached.

12. On October 6, 2020, after extensive research and analysis, a full-day mediation was held with Jeffrey Krivis, a well-respected wage and hour class action mediator. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. Ultimately, through a mediator's proposal, the parties agreed in principle on a class-wide resolution. As part of the Settlement, the Parties agreed that Plaintiff would file a First Amended Complaint which adds claims for: (i) failure to authorize and permit all legally required rest periods; (ii) failure to provide accurate, itemized wage statements; and (iii) liability for civil penalties under PAGA. In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Settlement ("Settlement"). A true and correct copy of the Settlement is attached hereto as **Exhibit 1**. The proposed First Amended Complaint is attached as Exhibit A to the Settlement. Additionally, the Notice Packet is attached as Exhibit B to the Settlement.

13. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$1,750,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$583,333.33
Minus Court-approved, verified costs (up to \$40,000.00):	\$40,000.00
Minus Court-approved Class Representative Service Award:	\$7,500.00
Minus Settlement Administration Costs:	\$10,000.00
Minus PAGA payment to the LWDA:	\$37,500.00
Net Settlement Amount ("NSA"):	\$1,071,666.67

With the exception of the Settlement Administrator's fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement

1 fund set up by the Settlement Administrator for the benefit of participating Settlement Class members.
2 Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within
3 thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court's final
4 approval of the settlement if no objections by or on behalf of Settlement Class members have been filed;
5 (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or
6 withdrawn; or (c) the final resolution of any appeal that has been filed. *See* Settlement, ¶ 5.B.

7 After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service
8 Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the
9 Settlement requires TK Services to pay a Net Settlement Amount (“NSA”) of at least **\$1,071,666.67** to
10 all Settlement Class members who do not timely opt out.

11 14. According to TK Services, there are approximately 400 total Settlement Class members
12 defined as:

13 All current and former non-exempt, hourly employees of Defendant TK Services, Inc. who
14 worked for Defendant in California at any time from November 6, 2013 through date of
15 preliminary approval.

16 For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of
17 November 6, 2013 through the date of preliminary approval of this Settlement Agreement. Thus, the
18 average Individual Settlement Payment (assuming all Settlement Class members worked the same
19 length of time) is projected to be approximately **\$2,679.17**.

20 15. Settlement Class members’ claims arise from TK Services’ common, uniform policies
21 and practices that applied to Settlement Class members during the class period. Specifically, Plaintiff
22 alleged that TK Services’ common and uniform policies and practices resulted in the following
23 violations: (1) failure to pay all overtime wages owed; (2) failure to pay all minimum wages owed; (3)
24 failure to pay all wages at the agreed-upon rate; (4) failure to provide all legally required meal periods;
25 (5) failure to pay all final wages upon separation of employment; (6) engagement in unlawful business
26 practices; (7) failure to authorize and permit all legally required rest periods; (8) failure to provide
27 accurate, itemized wage statements and (9) liability for civil penalties under the PAGA.
28

1 16. As described in the accompanying Motion for Preliminary Approval, Plaintiff alleges
2 that he and Settlement Class members were not fully compensated for all of their time worked.
3 Specifically, Plaintiff alleges TK Services would keep track of his hours and the hours of the other
4 non-exempt employees, and would unlawfully shave their work time and/or round their work time such
5 that they would not be fully paid for all time worked. Plaintiff also alleges that this time shaving and/or
6 rounding practice utilized by TK Services was not-even handed over time and would almost
7 exclusively round and shave in TK Services' favor such that the employees were routinely underpaid
8 for their time worked. Accordingly, Plaintiff's expert analyzed this rounding issue and found that it
9 favored the employer overwhelming, and then calculated a total wage underpayment of approximately
10 \$297,858.00.

11 17. TK Services contends that it compensated Settlement Class members for all of their
12 time worked. TK Services also contends that its rounding practices were lawful, and any unpaid time
13 was *de minimis* and therefore non-compensable. TK Services further asserts that Plaintiff would be
14 unable to certify a rounding class given the individualized inquiries that would be required, and also
15 that TK Services' rounding mechanism was, according to it, allegedly facially neutral. In light of these
16 defenses, Plaintiff discounted the maximum exposure by 35% for the risk of non-certification, and an
17 additional 35% to account for TK Services' defenses on the merits, to arrive at an estimated exposure
18 of \$125,845.01.

19 18. Plaintiff alleges that TK Services failed to include the payment of annual bonuses to
20 Plaintiff and Settlement Class members in the regular rate of pay when overtime was paid, resulting in
21 a systematic underpayment of overtime wages. Therefore, over the course of the Class Period, the
22 estimated underpayment in overtime wages owed as a result of TK Services' failure to include these
23 forms of payment in the regular rate was \$40,959.00.

24 19. TK Services contends that Settlement Class members received all overtime wages to
25 which they were entitled. TK Services further counters that any bonuses to putative class members
26 during the relevant time period were discretionary and did not need to be included in the regular rate
27 of pay for overtime purposes. Therefore, based on these risks, Plaintiff discounted the maximum
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1 exposure by 25% for the risk of non-certification, and an additional 30% to account for TK Services’
2 defenses on the merits, to arrive at an estimated exposure of \$21,503.48.

3 20. Plaintiff alleges that he and Settlement Class members were not provided with all
4 legally-compliant first meal periods beginning before the end of the fifth hour of work. Specifically,
5 Plaintiff alleges that up to December 1, 2017, TK Services did not record meal periods and would
6 unlawfully deduct thirty (30) minutes of work time for purported meal periods whether they were taken
7 or not, and whether they were less than 30 minutes or not. Further, once TK Services began keeping
8 track of meal periods, the records showed that in approximately 47% of the meal-enabling shifts, there
9 was either a late, short, or missed meal period. Therefore, Plaintiff calculated TK Services’ maximum
10 exposure the alleged meal period violations at approximately \$2,180,291.00 ((10,124 auto-deduct
11 shifts x \$25.49 average hourly rate) + (84,552 shifts with late, short, or missed meal periods x \$25.49
12 average hourly rate)).

13 21. TK Services counters that it has always provided non-exempt employees with an
14 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
15 employee timekeeping records were solely the result of employee choice, rather than any policy or
16 practice of TK Services. TK Services points out that it is only required to “provide” the opportunity
17 to take meal periods, not “ensure” meal periods are taken, and that they have always done so. Finally,
18 TK Services contends Plaintiff’s meal period claim is not suited for class certification, since individual
19 inquiries would be required to assess which employees took non-compliant meal periods, how many
20 meal periods were non-compliant or missed, and the reasons why a particular employee took a non-
21 compliant meal period or missed a meal period during a particular shift. Accordingly, Plaintiff
22 discounted the maximum exposure by 40% for the risk of non-certification, and an additional 35% to
23 account for TK Services’ defenses on the merits to arrive at an estimated exposure of \$850,313.49.

24 22. Plaintiff alleges that he and Settlement Class members were also not authorized and
25 permitted to take all required rest periods due to TK Services’ rest period policies and practices that
26 fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*.
27 Specifically, Plaintiff alleges that TK Services’ rest period policy as written in its Employee Handbook
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1 required non-exempt employees to remain on the work premises during rest periods. By prohibiting
2 its non-exempt employees from leaving the work premises during rest periods, Plaintiff alleges TK
3 Services fails to relinquish control in violation of California law and resulted in at least one rest period
4 violation on every shift in excess of 3.5 hours. Accordingly, Plaintiff calculated TK Services'
5 maximum exposure for rest period violations at \$5,212,272 (204,483 shifts over 3.5 hours x \$25.49
6 average hourly rate).

7 23. TK Services contends it has always maintained and enforced lawful rest period policies
8 and practices, and that Settlement Class Members were authorized and permitted to take all off-duty
9 rest periods in compliance with California law. TK Services also contends that Plaintiff did not allege
10 a rest period claim in his operative complaint. Further, TK Services argues that Plaintiff's rest period
11 claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether
12 each Settlement Class Member was in fact authorized and permitted to take a compliant rest period,
13 which would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff discounted the
14 maximum exposure by 50% for the risk of non-certification, and an additional 35% to account for TK
15 Services defenses on the merits to arrive at an estimated exposure of \$1,693,988.40.

16 24. Plaintiff further alleges that TK Services issued inaccurate wage statements in violation
17 of Labor Code § 226 as a result of the alleged unpaid minimum wages, overtime wages, agreed-upon
18 wages, and meal and rest period premium wages described above. Specifically, Plaintiff contends that
19 this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class
20 Members did not include all hours worked and the rate at which they were being paid. Plaintiff's data
21 analysis reflected that there were approximately 15,144 wage statements issued during the relevant
22 time period. Therefore, Plaintiff calculated TK Services' maximum exposure for wage statement
23 violations at approximately \$1,506,600 ((\$50.00 x 156 current employees) + (\$100.00 x 14,988
24 subsequent wage statements)).

25 25. TK Services argues that meal and rest period claims cannot support a claim for wage
26 statement penalties. TK Services further argues that its alleged wage statement violations could not be
27 shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee
28

1 “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code §
2 226(e) for imposition of penalties. As such, Plaintiff discounted the calculated exposure by 55% for a
3 risk of non-certification and an additional 50% for a risk of being unsuccessful on the merits, to arrive
4 at an estimated total of \$338,985.00.

5 26. Plaintiff alleges that TK Services is also liable for waiting time penalties under Labor
6 Code section 203 as a result of its failure to pay all wages. Based on the data provided by TK Services,
7 there were approximately 139 Settlement Class members who have separated their employment with
8 TK Services during the relevant time period who could be entitled to waiting time penalties. Therefore,
9 Plaintiff calculated TK Services’ maximum exposure for waiting time penalties at approximately
10 \$850,346 (139 former employees x \$25.49/hour x 30 days x 8 hours/day).

11 27. TK Services asserts it has strong defenses to the waiting time claim because there exist
12 good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties.
13 Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and
14 an additional 40% to account for TK Services’ defenses on the merits, to arrive at an estimated exposure
15 of \$280,614.18.

16 28. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged
17 Labor Code violations. Plaintiff calculated TK Services’ maximum exposure at \$1,514,400 (15,144
18 pay periods x \$100 initial violation rate).

19 29. TK Services argues that Plaintiff’s PAGA claim will fail for the same reasons that his
20 underlying claims will fail. TK Services also maintains that, given its good faith defenses, this Court
21 would exercise its discretion to substantially reduce any PAGA penalties if it were to find TK Services
22 liable for any of Plaintiff’s claims. Therefore, Plaintiff discounted the maximum exposure figure by
23 55% for a risk of being unsuccessful on the merits, and an additional 35% to account for the possibility
24 of this Court reducing penalties, to arrive at an estimated exposure of \$442,962.00.

25 30. Using these estimated figures for each of the claims described above, Plaintiff predicted
26 the realistic total recovery for the Settlement Class would be approximately \$3,754,212. The proposed
27 settlement of \$1,750,000.00 therefore represents approximately 46.6% of the reasonably forecasted
28 recovery for the Settlement Class. Preliminary approval is appropriate as the settlement will provide

1 tangible monetary relief to Settlement Class members, and will still provide an average recovery to
2 Settlement Class members of over \$2,600.00.

3 31. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the
4 GSA, which is currently estimated to be \$583,333.33, and up to \$40,000.00 in verified costs
5 reimbursement. Plaintiff submits the requested fee is fair compensation for undertaking complex,
6 risky, expensive, and time-consuming litigation on a purely contingent fee basis. My office has
7 incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims,
8 conducting legal research, propounding two sets of written discovery, participating in the *Belaire-West*
9 notice process, taking the deposition of TK Services' designated PMK, reviewing approximately
10 20,000 pages of TK Services' documents and policies, analyzing Settlement Class members'
11 timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising
12 the long-form Settlement, preparing this Motion, and otherwise litigating the case. I also anticipate
13 my office incurring future attorneys' fees in overseeing the Notice process and fielding questions from
14 Settlement Class members, preparing the final approval papers and attending the Final Approval
15 hearing.

16 32. Plaintiff has provided written approval of the split of attorneys' fees in this action: 48%
17 to Haines Law Group, APC, 32% to Lidman Law, APC, and 20% to Mitchell Law Corporation, APC.
18 Mitchell Law Corporation, APC is the referring attorney.

19 33. Plaintiff will seek a service award of \$7,500.00 at the time of seeking final approval,
20 and I believe this is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf
21 of the Settlement Class members, including the risk that he could be liable for TK Services' costs if
22 this case was unsuccessful. Plaintiff was integral in the prosecution of this action, by, among other
23 things, providing substantial factual information and documents to Class Counsel, attending multiple
24 meetings with Class Counsel to discuss the claims and theories at issue in the litigation, and otherwise
25 actively participating in the prosecution of their claims.

26 34. Although the parties engaged in formal and informal discovery throughout this action,
27 the parties still had significant discovery to complete in formal litigation had the matter not settled.
28

1 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
2 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. Even
3 if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur
4 considerably more attorneys' fees and costs through a possible decertification motion, trial, and
5 possible appeal. This Settlement avoids those risks and the accompanying expense.

6 35. Plaintiff submitted a letter to the California Labor & Workforce Development Agency
7 ("LWDA") and Defendant TK Services on October 28, 2020. A true and correct copy of the LWDA
8 letter is attached hereto as **Exhibit 2**.

9 36. Plaintiff will serve the Motion for Preliminary Approval and proposed Settlement
10 Agreement on the LWDA on the same date he files his Motion for Preliminary Approval.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct. Executed on March 10, 2021 at El Segundo, California.

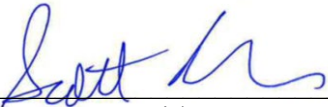
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14 
15 _____
16 Scott M. Lidman
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EXHIBIT 1

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Raul Nunez (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant TK Services, Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC (collectively, “Class Counsel”). Defendant is represented by Elaine B. Alston and Paul D. Copenbarger of Copenbarger & Associates.

On November 6, 2017, Plaintiff filed a Complaint against Defendant in Los Angeles County Superior Court, in the matter entitled *Raul Nunez v. TK Services, Inc.*, Case No. BC682512 (the “Action”) alleging the following claims against Defendant: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to pay all wages at the agreed-upon rate; (d) failure to provide meal periods, or premium pay for non-compliant meal periods; and (e) failure to pay all wages upon termination; and (g) unlawful deductions from wages. As a result of the foregoing alleged violations, Plaintiff contends that Defendant is further liable to Plaintiff and the Settlement Class (defined below) because it engaged in unlawful business practices pursuant to Business and Professions Code section 17200 that could have been premised on the facts, claims, causes of action or legal theories described above. Defendant denies Plaintiff’s claims.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class, aggrieved employees and the State of California. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt, hourly employees of Defendant TK Services, Inc. who worked for Defendant in California at any time from November 6, 2013 through date of preliminary approval of the Settlement.

For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of November 6, 2013 through the date of preliminary approval of this Settlement Agreement.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Amendment to Complaint.** In connection with the mediation, Defendant provided Plaintiff with time punch and pay data and other information relating to the members of the Settlement Class. That information was analyzed by Plaintiff, and the Parties negotiated this

Settlement with the intention of resolving not only the claims asserted in the Complaint, but also claims for: (i) failure to authorize and permit rest periods, or pay premium pay for non-compliant rest periods, (ii) failure to issue accurate, itemized wage statements; and (iii) violations of the Labor Code Private Attorney General Act of 2004 (“PAGA”) that could have been premised on the facts, claims, causes of action or legal theories alleged in the Complaint and also related to rest periods and wage statements. Therefore, as a material term and condition of this Settlement, the Parties agree to stipulate, for settlement purposes only, that Plaintiff be granted leave to file a First Amended Complaint to add causes of action for (i) failure to authorize and permit rest periods, or pay premium pay for non-compliant rest periods, (ii) failure to issue accurate, itemized wage statements; and (iii) violations of the PAGA. Defendant shall cooperate, as necessary, to stipulate to and/or otherwise effectuate the filing of the First Amended Complaint. Defendant shall cooperate, as necessary, to with respect to Plaintiff sending a letter to the Labor & Workforce Development Agency asserting claims based on the allegations asserted in the proposed First Amended Complaint in the Action. This Settlement is expressly conditioned upon the Court granting leave to file the First Amended Complaint. If the Court denies preliminary or final approval of this settlement for any reason, then the First Amended Complaint shall be stricken and the pleadings in this Lawsuit shall be restored as if no settlement was reached by the parties. The Proposed First Amended Complaint is attached to this Settlement as **Exhibit A**. If the Court grants preliminary approval and leave for Plaintiff to file the First Amended Complaint, Plaintiff shall file the First Amended Complaint within ten court days, and Defendant is not required to file an answer to the First Amended Complaint

3. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) will fully and forever completely release and discharge Defendant, and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), as follows:

- A. Settlement Class Members’ Release: Settlement Class members and Plaintiff will release all claims, demands, rights, liabilities and causes of action that were pled in any of the Complaints in the Action (including the proposed First Amended Complaint attached hereto as Exhibit A), or which could have been pled in any of the Complaints in the Action (including the proposed First Amended Complaint attached hereto as Exhibit A) based on the factual allegations therein, that arose during the Class Period including but not limited to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to pay all wages at the agreed-upon rate; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; and (i) a claim under California Labor Code Private Attorneys General Act of 2004 that were or could have been premised on the facts, claims, causes of action or legal

theories described above and in the operative Complaint (collectively, the “Released Claims”).

- B. The time period for the release of the Released Claims shall be the same time period as the Class Period.
- C. In light of the Class Representative Service Award, Plaintiff agrees to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims, which includes waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

- D. Notwithstanding the above, nor anything else in this Settlement, the waiver and release in this Settlement does not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers’ compensation claims, pending or otherwise and/or benefits to be received by Plaintiff in workers’ compensation pursuant to the jurisdiction of workers’ compensation; and (ii) rights or claims arising out of this Settlement.
- E. The releases identified herein will only be effective on the date that Defendant fully funds the Gross Settlement Amount.

4. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a “Gross Settlement Amount” of One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00) (unless such Gross Settlement Amount is increased pursuant to Paragraph 3.E. below) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators (or other mutually agreeable alternative Settlement Administrator) as the “Settlement Administrator” to administer this Settlement. All administrative costs shall be paid from the Gross Settlement Amount.
- B. With the exception of the Settlement Administrator’s fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court’s final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an

objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

C. This is a non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class members;
- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Ten Thousand Dollars and Zero Cents (\$10,000.00);
- (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff's Class Representative Service Award, in recognition of his contributions to the Action, and his service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this Settlement Agreement, and this Settlement shall remain binding;
- (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees [estimated to be Five Hundred Eighty Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$583,333.33), unless the Gross Settlement Amount is increased pursuant to Paragraph 4.E. below], plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Forty Thousand Dollars and Zero Cents (\$40,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees and/or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
- (5) Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

D. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

E. **Unexpected Workweeks/Escalator Clause.** Defendant represents that there are an estimated 46,613 workweeks worked by Class Members during the Class Period. If the number of pay periods during the Class Period is more than 10% greater than this figure (*i.e.*, if there are 51,275 or more workweeks worked by the settlement class members during the Class Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis to the extent the

number of workweeks exceed the total (*i.e.*, if there was 15% increase in the number of workweeks worked during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 15%). For the purposes of this Section the Class Period shall be no later than ninety (90) days after the October 6, 2020 mediation,

5. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiff’s Class Representative Service Award, the Settlement Administrator’s fees and expenses for administration, and the amount designated as PAGA civil penalties payable to the LWDA. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Settlement Award based on the following formula:
 - i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member’s total workweeks worked as a non-exempt employee during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period.
- C. PAGA Amount: Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. Each Settlement Class member who was employed by Defendant at any time from November 6, 2016 to the date of preliminary approval (the “PAGA Period”) of this Settlement shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked as a non-exempt employee during this time period. Each Settlement Class member who worked during this time period shall receive a portion of the PAGA Amount, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class members’ number of workweeks worked as a non-exempt employee during this time period, and the denominator of which is the total number of workweeks worked by all Settlement Class members as non-exempt employees during this time period.
- D. Within ten (10) calendar days following Defendant’s deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to

counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.

- E. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Seventy-five percent (75%) as penalties and interest; and Twenty-Five percent (25%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- F. Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member.

6. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be Five Hundred Eighty Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$583,333.33) (unless the Gross Settlement Amount is increased pursuant to Paragraph 4.E. above, in which case the attorneys' fees shall increase accordingly). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

7. **Class Representative Service Award.** Defendant will not object to a request for a Class Representative Service Award of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff for his time and risk in prosecuting this case, and his service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

Even in the event that the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.

8. **Settlement Administrator.** Defendant will not object the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff's seeking permission to pay up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, which shall be paid by Defendant separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members.

9. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Milan Moore and Elizabeth Nguyen of Lidman Law, APC as Class Counsel;
- C. Appointing Raul Nunez as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award, drafts of which are attached collectively hereto as **Exhibit B**), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

10. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fifteen (15) calendar days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, positions held, the number of workweeks worked (or information allowing the Settlement Administrator to calculate same) as a non-exempt employee by each Settlement Class member while employed during the Class Period and PAGA Period (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.

- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. The Parties agree there is no statutory or other right for any Settlement Class member to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement. A Settlement Class member who submits a valid and timely Request for Exclusion shall still receive his or her proportionate share of the PAGA Amount.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by mailing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant’s counsel). Class Counsel shall file any objections with the Court. Defendant’s counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting

Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence, if any; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing in person or virtually irrespective of whether they submitted any written objections.

- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well the Settlement Class member's number of pay periods worked as a non-exempt employee during the Class Period. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. If a resolution cannot be reached by and among the Parties and the Settlement Administrator, the Court will render all final decisions on disputes.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be presumed that, if an envelope so mailed has not been returned within twenty (20) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

11. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Service Award, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769 and posting notice of the judgment on a static website created and maintained by the Settlement Administrator.

12. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendant and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

13. **Non-disclosure and Non-publication.** Prior to the filing of the Motion for Preliminary Approval, Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

14. **Legal Developments.** The Parties agree that Plaintiff will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Claims.

15. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

16. **Attorneys' Fees:** In the event of any dispute arising out of the interpretation, performance, or breach of any provision of this Settlement Agreement, the prevailing party in such dispute(s) shall be entitled to recover her and/or its reasonable attorneys' fees and costs incurred arising from such dispute.

17. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Paul D. Copenbarger and Elaine B. Alston of Copenbarger & Associates, 27201 Puerta Real, Suite 300, Mission Viejo, California 92691; ca@copenbargerlaw.com and elaine@copenbargerlaw.com

if to Plaintiff: Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150 El Segundo, California 90245; slidman@lidmanlaw.com and enguyen@lidmanlaw.com

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com

18. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

19. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

20. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED:

January 12, 2021

DEFENDANT TK SERVICES, INC.

By: 

Its: President of TK Services, Inc

DATED: Jan 15, 2021

PLAINTIFF RAUL NUNEZ

By: 
Raul nunez (Jan 15, 2021 15:04 CST)

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

COPENBARGER & ASSOCIATES

By: _____
Elaine B. Alston
Attorneys for Defendant TK Services, Inc.

DATED: January 15, 2021

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Attorneys for Plaintiff Raul Nunez

DATED: January 15, 2021

LIDMAN LAW, APC

By: 
Scott M. Lidman
Attorneys for Plaintiff Raul Nunez

DATED:

PLAINTIFF RAUL NUNEZ

By: _____

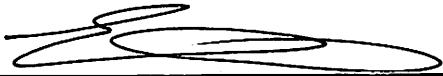
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

January 13, 2021

COPENBARGER & ASSOCIATES

By:  _____

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Attorneys for Defendant TK Services, Inc.

DATED:

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By: _____

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DATED:

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EXHIBIT A

EXHIBIT A

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RAUL NUNEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RAUL NUNEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TK SERVICES, INC., a California
corporation; and DOES 1 through 100,
Defendants.

Case No.: BC682512

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL
OVERTIME WAGES OWED
(LABOR VODE §§ 204, 510, 558,
1194, 1198)**
- (2) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (3) FAILURE TO PAY ALL WAGES AT
THE AGREED-UPON RATE
(LABOR CODE §§ 221-223);**

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- (4) **FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7, 512);**
- (5) **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (LABOR CODE §§ 226.7, 516, 558);**
- (6) **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES (LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACTION OF 2004 (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Raul Nunez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 TK SERVICES, INC., a California corporation, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 FAC for recovery of unpaid wages and penalties under California Business & Professions Code
8 § 17200 *et seq.*, Labor Code §§ 201-203, 204, 218 *et seq.*, 221-223, 226 *et seq.*, 226.7, 510, 512,
9 516, 558, 1192, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and Industrial Welfare
10 Commission Wage Order 1 (“Wage Order 1”), in addition to seeking declaratory relief and
11 restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This
12 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
13 amount in controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s)
18 within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles,
19 and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-203, 204, 218 *et seq.*, 221-223, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1192, 1194, 1194.2,
28 1197, 1197.1, 1198, 2698 *et seq.*, ; California Business & Professions Code § 17200 *et seq.*

1 (“Unfair Competition Law”); and Wage Order 1, which sets employment standards for the
2 manufacturing industry, which includes the industry in which Plaintiff worked for Defendants.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of the FAC and continuing to the present, Defendants did (and continue
5 to do) business by manufacturing what it represents are the most dependable and durable
6 refrigeration and heating units (temperature control units) for truckers, trailers, rail cars and
7 ocean-going containers around the globe. Defendants further provide maintenance and other
8 services related to their temperature control units they manufacture. Defendants employed
9 Plaintiff and other, similarly-situated non-exempt employees within, among other counties, Los
10 Angeles County and the state of California and, therefore, were (and are) doing business in Los
11 Angeles County and the State of California.

12 5. Plaintiff does not know the true names or capacities, whether individual, partner,
13 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
14 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
15 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
16 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
17 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
18 and proximately caused Plaintiff and the Classes (as defined in Paragraph 19) to be subject to the
19 unlawful employment practices, wrongs, injuries and damages complained of herein.

20 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
21 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

22 7. At all times herein mentioned, each of said Defendants participated in the doing
23 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
24 Defendants, and each of them, were the agents, servants, and employees of each and every one of
25 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
26 were acting within the course and scope of said agency and employment. Defendants, and each
27 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
28 omissions complained of herein.

1 8. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
5 members of the Classes.

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Defendants maintain shops/branches/locations at which they manufacture, sell and
8 service their temperature control units in California in Los Angeles, San Diego, Fontana,
9 Stockton, Redding, San Leandro and Sacramento. Plaintiff was employed by Defendants as a
10 non-exempt employee in various positions, the last of which was Shop Foreman, from
11 approximately 1987 through approximately February 26, 2016. Plaintiff performed various duties
12 during his employment with Defendants, including, without limitation, installing and servicing
13 temperature control units.

14 10. During his employment with Defendants, Plaintiff was typically scheduled to work
15 commencing at approximately 7:30 a.m. until approximately 4:00 p.m. However, Plaintiff would
16 often arrive at work and commence working prior to his scheduled start time. Despite clocking
17 in and commencing work prior to the scheduled start of his shift, Defendants would only pay
18 Plaintiff from the scheduled start of his shift, rather than from the time that he clocked in and
19 actually began performing work for Defendants. At all relevant times, Defendants knew and/or
20 reasonably should have known that Plaintiff was working and providing services to Defendants
21 at their direction and control.

22 11. Throughout Plaintiff's employment with Defendants, Defendants would keep
23 track of Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or round
24 Plaintiff's work time such that Plaintiff would not be fully paid for all time worked. This time-
25 shaving/rounding practice utilized by Defendants was not even-handed over time and would
26 almost exclusively round and shave in Defendants' favor such that Plaintiff was routinely
27 underpaid for his time worked. For example, on February 19, 2016, Plaintiff's time records
28 indicate he worked a portion of the day from 7:00 a.m. until 12:00 p.m., yet was only allotted 4.5

1 hours of work time instead of the actual 5 hours worked. There are many instances within
2 Plaintiff's records indicating his time was rounded and/or shaved by Defendants and in their
3 favor, resulting in Plaintiff being routinely underpaid his wages. Further, had Plaintiff been
4 properly allotted all the time he actually worked, including the time unlawfully shaved/rounded
5 and the time he worked before and after his scheduled shift, he would have often worked in excess
6 of 8 hours in a day and/or 40 hours in a week resulting in overtime which was either not paid, or
7 underpaid.

8 12. During Plaintiff's employment with Defendants, Plaintiff was not required to and
9 did not keep track of and/or clock out and in for his meal periods. Rather, Defendants would
10 instead auto-deduct thirty (30) minutes of time from Plaintiff's daily work time to account for
11 meal periods regardless of whether the meal periods were actually taken, and also regardless of
12 whether the meal periods lasted less than thirty (30) minutes. This practice by Defendants resulted
13 in Defendants not properly tracking the time worked by Plaintiff, and also resulted in Defendants
14 paying Plaintiff less than he was owed for the work he performed. Further, because Defendants
15 were unlawfully auto-deducting from Plaintiff's work time thirty (30) minutes per day regardless
16 of whether Plaintiff actually took a meal period and/or regardless of whether Plaintiff took a meal
17 period of less than thirty (30) minutes, Defendants failed to pay Plaintiff for that unlawfully
18 deducted time, resulting in unpaid minimum, straight-time and overtime wages.

19 13. Throughout Plaintiff's employment with Defendants, Plaintiff and other non-
20 exempt employees would receive annual non-discretionary bonuses, and other forms of non-
21 discretionary pay (hereinafter the aforementioned forms of pay are collectively referred to as
22 "Incentive Pay"). As a result of Plaintiff receiving Incentive Pay, Defendants did not properly
23 calculate Plaintiff's regular rate of pay for overtime purposes, thereby causing Plaintiff to be
24 underpaid all of his required overtime wages.

25 14. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided
26 all required meal periods due to Defendants' meal period policies/practices which fail to provide
27 uninterrupted, duty-free 30-minute meal periods. Specifically, Defendants had a policy/practice
28 of not always providing an uninterrupted, duty-free 30-minute meal period to non-exempt

employees who worked shifts in excess of five hours. Specifically, the nature of Plaintiff's duties often required him to skip his meal period and/or take a meal period of less than thirty (30) minutes in duration. When this occurred, it was the result of Defendants' directions and not because of Plaintiff's own choosing. Further, Plaintiff was often required to commence his meal period later than the end of his fifth hour of work. Indeed, Defendants would prepare schedules which included time for taking a lunch, and the schedules would often schedule a lunch to commence well-after the end of the fifth hour of work. Again, this was at the direction of Defendants and not because of Plaintiff's own choosing, and resulted in Plaintiff's meal period being scheduled later than the law requires. Although Plaintiff was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

15. In addition, throughout Plaintiff's employment with Defendants, Plaintiff was not authorized and permitted to take legally required rest periods due to Defendants' unlawful rest period policies and practices. Specifically, Defendants' required Plaintiff and other non-exempt employees to remain on the work premises during their rest periods, resulting in Defendants failing to relinquish control over how employees spend their time during rest periods in violation of California law.

16. On those occasions when Plaintiff was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to provide a legally compliant rest period.

17. As a result of Defendants' failure to pay all minimum, overtime and agreed-upon

wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

18. As a further result of Defendants' failure to pay all minimum, overtime and agreed-upon wages, and meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon his separation of employment from Defendants.

CLASS ACTION ALLEGATIONS

19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week, and: (i) were subject to Defendants' timekeeping system; (ii) received Incentive Pay; and/or (iii) had automatic deductions taken for purported meal periods, during the four years preceding the filing of the lawsuit through the present.
- b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) were subject to Defendants' timekeeping system; and/or (ii) had automatic deductions taken for purported meal periods, during the four years preceding the filing of the lawsuit through the present.
- c. The Agreed-Upon Rate Class consists of all of Defendants' current and former non-exempt employees in California who: (i) were subject to Defendants' timekeeping system; and/or (ii) had automatic deductions taken for purported meal periods, during the four years preceding the filing of the lawsuit through the present.
- d. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of the lawsuit through the present.

e. The Rest Period Class consists of all of Defendants' current and former non-exempt employees who worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of the lawsuit through the present.

f. The Wage Statement Class consists of all members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Agreed-Upon Rate Class; (iv) Meal Period Class; and/or (v) Rest Period Class, during the one year immediately preceding the filing of the lawsuit through the present.

g. The Waiting Time Penalty Class consists of all members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Agreed-Upon Rate Class; (iv) Meal Period Class; and/or (v) Rest Period Class, who separated their employment with Defendants during the three years immediately preceding the filing of the lawsuit through the present.

h. The UCL Class consists of all members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Agreed-Upon Rate Class; (iv) Meal Period Class; (v) Rest Period Class; (vi) Wage Statement Class; and (vii) Waiting Time Penalty Class, during the four years immediately preceding the filing of the lawsuit through the present.

20. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants properly paid all minimum wages, agreed-upon wages and/or overtime wages at the regular rate to members of the Minimum Wage Class, Agreed-Upon Rate Class and Overtime Class pursuant to Labor Code §§ 204, 221, 510, 558, 1192, 1194, 1194.2, 1197, 1197.1 and 1198;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- v. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of their separation of employment were lawful; and
- vi. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform minimum wage, agreed-upon wage, overtime wage payment, and meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum

wages, agreed-upon wages, and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal and periods, was not provided with accurate, itemized wage statements, and was not paid all wages upon termination of his employment.

25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would

1 establish potentially incompatible standards of conduct for Defendants; and/or legal
2 determinations with respect to individual class members which would, as a practical matter, be
3 dispositive of the interest of the other class members not parties to adjudications or which would
4 substantially impair or impede the ability of the class members to protect their interests. Further,
5 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
6 individual prosecution considering all of the concomitant costs and expenses attending thereto.
7 As such, the Classes identified in Paragraph 19 are maintainable as a Class under § 382 of the
8 Code of Civil Procedure.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME WAGES**

11 **(AGAINST ALL DEFENDANTS)**

12 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and
14 1198 which provide that all non-exempt employees are entitled to all overtime wages for all
15 overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private
16 right of action for the failure to pay all overtime compensation for overtime work performed.

17 29. At all times relevant herein, Defendants were required to properly compensate
18 Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to
19 California Labor Code §§ 510 and 1194, and Wage Order 1. Labor Code § 510 and Wage Order
20 1, Section 3 require an employer to pay an employee “one and one-half (1½) times the regular
21 rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek.
22 Labor Code § 510 and Wage Order 1, Section 3 also require an employer to pay an employee
23 double the employee’s regular rate for work in excess of 12 hours each workday and/or in excess
24 of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff
25 and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours
26 in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class
27 at one and one-half their regular rate of pay for such hours. Defendants also caused Plaintiff and
28 the members of the Overtime Class to work in excess of 12 hours in a workday but did not

properly compensate Plaintiff and the members of the Overtime Class at double their regular rate of pay for such hours.

30. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES OWED

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation for all work performed.

33. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code §§ 1194, 1197 and 1198, and Wage Order 1. Wage Order 1, Section 4 requires an employer to pay to every employee on the established payday for the period involved not less than the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiff and the members of the Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiff and the members of the Minimum Wage Class at least minimum wages for such hours.

34. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing

1 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated
2 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
3 Labor Code § 1194.2.

4 35. The foregoing practices and policies are unlawful and create entitlement to
5 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
6 amount of minimum wages owing, including interest thereon, as well as statutory penalties,
7 liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code
8 §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 1, California Code
9 of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§
10 3287(b) and 3289.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PAY ALL AGREED-UPON WAGES**

13 **(AGAINST ALL DEFENDANTS)**

14 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 37. This cause of action is brought pursuant to Labor Code §§ 204 and 221-223 which
16 provide that all non-exempt employees are entitled to be paid all wages owed at the rate agreed
17 upon with their employer, and provide a private right of action for the failure to pay all wages
18 owed at the agreed-upon rate for all work performed.

19 38. At all times relevant herein, Defendants were required to properly compensate
20 Plaintiff and the members of the Agreed-Upon Rate Class for all hours worked at the rate agreed
21 to with Defendants, pursuant to California Labor Code §§ 221-223. At all relevant times herein,
22 Defendants required Plaintiff and the members of the Agreed-Upon Rate Class to remain under
23 Defendants' control and perform work without paying them therefor, which resulted in Plaintiff
24 and the members of the Agreed-Upon Rate Class to earn less than the agreed rate for their work.
25 This pattern and practice by Defendants of failing to pay the agreed-upon rate for all work
26 performed violates the Labor Code and constitutes unjust enrichment.

27 39. The foregoing practices and policies are unlawful and create entitlement to
28 recovery by Plaintiff and the members of the Agreed-Upon Rate Class in a civil action for the

unpaid amount of agreed-upon wages owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 221, and 558 California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

42. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, California Code of Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Wage Order 1, § 12 and California Labor Code §§ 226.7, 516 and 558 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

45. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods. Specifically, Defendants maintained a

1 policy or practice of requiring its non-exempt employees remain on the work premises during rest
2 periods in violation of California law.

3 46. The foregoing violations create an entitlement to recovery by Plaintiff and
4 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
5 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
6 according to California Labor Code §§ 226.7, 516, 558, Wage Order 1, California Code of Civil
7 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

10 **(AGAINST ALL DEFENDANTS)**

11 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
12 fully set forth herein.

13 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
15 and the Wage Statement Class Members with accurate, itemized wage statements that included
16 among other requirements, accurate total gross wages earned, meal and rest period premiums, and
17 total net wages earned in violation of Labor Code § 226 *et seq.*

18 49. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
19 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
20 failures led to, among other things, accurate total gross wages earned, meal and rest period
21 premiums, and total net wages earned in violation of Labor Code § 226 *et seq.*

22 50. Defendants' failures created an entitlement to Plaintiff and members of the Wage
23 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
24 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
25 pursuant to Labor Code § 226 *et seq.*

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1 *et seq.*, by failing to pay all overtime, minimum and/or agreed-upon wages owed, failing to
2 provide all required meal periods, and failing to pay meal period premium wage payments.

3 57. Defendants' utilization of these unfair and/or unlawful business practices deprived
4 Plaintiff and continues to deprive members of the Classes of compensation to which they are
5 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
6 over Defendants' competitors who have been and/or are currently employing workers and
7 attempting to do so in honest compliance with applicable wage and hour laws.

8 58. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
9 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
10 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
11 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

12 59. The acts complained of herein occurred within the last four years immediately
13 preceding the filing of the Complaint in this action.

14 60. Plaintiff was compelled to retain the services of counsel to file this court action to
15 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
16 of Defendants' current non-exempt employees, and to enforce important rights affecting the
17 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
18 which he is entitled to recover under Code of Civil Procedure § 1021.5.

19 **NINTH CAUSE OF ACTION**

20 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

21 **(AGAINST ALL DEFENDANTS)**

22 61. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 62. Defendants have committed several Labor Code violations against Plaintiff and
24 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
25 § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
26 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
28 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for

1 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
2 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
3 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
4 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
5 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
6 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
7 for each subsequent violation per employee per pay period for those violations of the Labor Code
8 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 9 a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to
10 pay Plaintiff and other aggrieved employees all overtime compensation earned;
- 11 b) Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing
12 to pay Plaintiff and other aggrieved employees the statutory minimum wage for
13 all hours worked;
- 14 c) Defendants violated Labor Code §§ 221-223 by failing to pay Plaintiff and other
15 aggrieved employees their agreed-upon rate for their hours worked;
- 16 d) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all
17 legally required meal periods and failing to pay meal period premiums to
18 Plaintiff and other aggrieved employees;
- 19 e) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize
20 and permit all legally required rest periods and failing to pay rest period
21 premiums to Plaintiff and other aggrieved employees;
- 22 f) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other
23 aggrieved employees with accurate and compliant itemized wage statements;
- 24 g) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
25 aggrieved employees all earned wages at least twice during each calendar month;
- 26 h) Defendants violated Labor Code § 1174 by failing to maintain accurate records
27 on behalf of Plaintiff and other aggrieved employees; and
28

1 i) Defendants violated Labor Code § 203 by failing to pay Plaintiff and other
2 aggrieved employees for all wages owed at the time of their termination of
3 employment.

4 63. On October 28, 2020, Plaintiff notified Defendants via certified mail, and the
5 California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’
6 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
7 under California Labor Code § 2698 et seq. with respect to violations of the California Labor
8 Code identified in Paragraph 62 (a)-(i). Now that sixty-five days have passed from Plaintiff
9 notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements
10 for bringing a claim under the Labor Code Private Attorneys General Act with respect to these
11 violations.

12 64. Plaintiff was compelled to retain the services of counsel to file this court action to
13 protect his interests and the interests of other aggrieved employees, and to assess and collect the
14 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs,
15 which they are entitled to receive under California Labor Code § 2699.

16 **PRAYER**

17 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
18 this suit is brought against Defendants, as follows:

- 19 1. For an order certifying the proposed Classes;
- 20 2. For an order appointing Plaintiff as representative of the Classes;
- 21 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 22 4. Upon the First Cause of Action, for compensatory, consequential, general and
23 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198.
- 24 5. Upon the Second Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1197, 1197.1 and
26 1198;
- 27 6. Upon the Third Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 204, and 221-223;

1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

3 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

5 9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant
6 to Labor Code § 226 *et seq.*;

7 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
8 to Labor Code §§ 201-203;

9 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
12 *seq.*;

13 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
15 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
16 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
17 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
18 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
19 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
20 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
21 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
22 for each subsequent violation per employee per pay period for those violations of the Labor Code
23 for which no civil penalty is specifically provided, based on the Labor Code violations cited in
24 Paragraph 62 (a)-(i) above.

25 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
26 Code § 218.6 and Civil Code §§ 3287 and 3289;

27 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
28 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

1 15. For such other and further relief the Court may deem just and proper.

2
3 Dated: _____, 2021

Respectfully submitted,
LIDMAN LAW, APC

4
5 By: _____

Scott M. Lidman
Attorneys for Plaintiff
RAUL NUNEZ

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7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

10
11 Dated: _____, 2021

Respectfully submitted,
LIDMAN LAW, APC

12
13 By: _____

Scott M. Lidman
Attorneys for Plaintiff
RAUL NUNEZ

EXHIBIT B

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

RAUL NUNEZ,

Plaintiff,

vs.

TK SERVICES, INC., a California corporation; and
Does 1 through 100,

Defendants.

Case No. BC682512

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt, hourly employees of Defendant TK Services, Inc. who worked for Defendant in California at any time from November 6, 2013 through date of preliminary approval of the Settlement. Collectively, these employees will be referred to as "Settlement Class members."

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

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Raul Nunez v. TK Services, Inc., et al.*, Case No. BC682512 (the "Lawsuit"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant's records show that you were employed by TK Services, Inc. ("TK Services" or "Defendant") as a non-exempt employee in California between November 6, 2013, and the date the Court enters the order granting preliminary approval of this Settlement. For purposes of this Settlement Agreement, the "Class Period" shall mean the time period of November 6, 2013 through the date the Court enters the order granting preliminary approval of this Settlement.

The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Raul Nunez ("Plaintiff") brought this Lawsuit against Defendant, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Defendant in California at any time beginning November 6, 2013. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

The Lawsuit alleges that TK Services failed to provide Settlement Class members all minimum, overtime, and/or agreed-upon wages, failed to provide all legally required meal periods, and failed to authorize and permit all legally required rest periods. As a result of the foregoing alleged violations, Plaintiff also alleges that TK Services failed to provide accurate, itemized wage statements, failed to pay all wages upon termination of employment, engaged in unfair business practices and is liable for civil penalties under the California Labor Code Private Attorney General Act ("PAGA").

TK Services denies that it has done anything wrong. TK Services further denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of TK Services, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with its business operations, TK Services has concluded that it is in its best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. After TK Services provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to TK Services, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by TK Services, your decision about whether to participate in the Settlement will not affect your employment. California law and TK Services' policies strictly prohibit unlawful retaliation. TK Services will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff/Settlement Class Members: LIDMAN LAW, APC Scott M. Lidman slidman@lidmanlaw.com Elizabeth Nguyen enguyen@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Defendant TK Services, Inc.: COPENBARGER & ASSOCIATES Paul D. Copenbarger paul@copenbargerlaw.com Elaine B. Alston elaine@copenbargerlaw.com 27201 Puerta Real, Suite 300 Mission Viejo, CA 92691 Tel: (949) 420-4575 Fax: (714) 979-9044
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What are the terms of the Settlement?

On [INSERT DATE OF PRELIMINARY APPROVAL], the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for TK Services in California at any time from November 6, 2013 through **the date the Court enters the order granting preliminary approval of this Settlement**. Settlement Class members who do not opt out of the Settlement

pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant as described below.

Defendant has agreed to pay \$1,750,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class members, attorneys’ fees and expenses, payment to the Labor Workforce Development Agency (“LWDA”), settlement administration costs, and the Class Representative’s Service Award. Defendant’s share of payroll taxes associated with any wage payments to Settlement Class members shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$10,000.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$583,333.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$40,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount of \$7,500.00, to compensate him for his service and extra work provided on behalf of the Settlement Class members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$50,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act (“PAGA”). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or \$37,500.00 will be payable to the LWDA, and the remaining twenty-five percent (25%), or (\$12,500.00), will be payable to certain Settlement Class members as the “PAGA Amount,” as described below.

Calculation of Individual Settlement Class Members’ Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$1,071,666.67, to be shared among an estimated 400 Settlement Class members. The NSA will be divided as follows:

- (i) The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member’s total workweeks worked as a non-exempt employee during the Class Period, and the denominator of which is the total workweeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period.
- (ii) In addition, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. Each Settlement Class member who was employed by Defendant at any time from

November 6, 2016 to the date of preliminary approval (the “PAGA Period”) of this Settlement shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked as a non-exempt employee during this time period. Each Settlement Class member who worked during this time period shall receive a portion of the PAGA Amount, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class members’ number of workweeks worked as a non-exempt employee during this time period, and the denominator of which is the total number of workweeks worked by all Settlement Class members as non-exempt employees during this time period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion.

Payment by Defendant of Gross Settlement Amount. With the exception of the Settlement Administrator’s fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court’s final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

Within ten (10) calendar days following TK Services’ deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members.

Each member of the Settlement Class who receives a Settlement Award must cash the check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members who checks were not cashed within 180 days after mailing will be submitted to the California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member.

Allocation and Taxes. For tax purposes, each Settlement Award shall be allocated as follows: 75% as penalties and interest; and 25% as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will fully and forever completely release and discharge Defendant, and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), from all claims, demands, rights, liabilities and causes of action that were pled in any of the Complaints in the Action, or which could have been pled in any of the Complaints in the Action based on the factual allegations therein, that arose during the Class Period with respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to pay all wages at the agreed-upon rate; (d) failure to provide meal periods, or premium pay for non-compliant meal periods; (e) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (f) failure to provide accurate, itemized wage statements; (g) failure to timely pay wages upon separation of employment; (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; and (i) a claim under California Labor Code Private Attorneys General Act

of 2004 that were or could have been premised on the facts, claims, causes of action or legal theories described above and in the operative Complaint (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Class Period.

The Parties acknowledge that under the release, the right of the LWDA to investigate the released PAGA claims is not released, but Released Claims do include any claims for penalties by a Class Member as a result of any such LWDA investigation, and Class Members are waiving their right to act as a private attorney general as to the Released Claims. The period of the Release shall extend to the limits of the Class Period.

The release identified herein shall be effective following Defendant’s payment of the Gross Settlement Amount in full.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of individual workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, and also whether you have worked between November 6, 2016 and **the date the Court enters the order granting preliminary approval of this Settlement**. The information contained in Defendant’s records regarding all of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion from the Class Action Settlement” letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE NUNEZ V. TK SERVICES LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections must be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

Whether or not you submit a written objection, if you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department SSC-14 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. You have the right to appear either remotely, in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Raul Nunez v. TK Services, Inc., et al.*, Los Angeles County Superior Court Case No. BC682512.

Any Settlement Class member who elects to appear personally at the Court for any reason related to this Lawsuit must comply with the Court's social distancing and mandatory face covering requirements, as well as any other orders related to COVID-19. All such rules and orders can be located at the Court's website: www.lacourt.org.

For more information on how to appear remotely, please visit the Court's website at <http://www.lacourt.org/division/civil/CI0040.aspx> and <https://www.lacourt.org/lacc/>.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department SSC-14 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 111 N. Hill Street, Los Angeles, California 90012, during regular court hours. Due to COVID, appointments are required for clerk's office services. Please visit the Court's website at http://www.lacourt.org/newsmedia/uploads/142020529162327NR_Clerks_Office_05_29_20-FINAL.pdf and <https://www.lacourt.org/> for information on how to make an appointment in the Clerk's Office. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, TK SERVICES, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

NOTICE OF SETTLEMENT AWARD

RAUL NUNEZ v. TK SERVICES, INC.
LOS ANGELES COUNTY SUPERIOR COURT CASE No. BC682512

Please complete, sign, date and return this Form to Phoenix Settlement Administrators <<ADMINISTRATOR CONTACT INFO>> ONLY IF (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Claims Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment:

According to TK Services, Inc.'s ("TK Services") records:

- (a) You worked a total of [] workweeks for TK Services during the period November 6, 2013 through the date the Court enters the order granting preliminary approval of this Settlement; and
- (b) You worked a total of [] workweeks for TK Services during the period November 6, 2016 through the date the Court enters the order granting preliminary approval of this Settlement.

Based on the above, your Individual Settlement Payment is estimated to be \$ [].

(IV) If you disagree with any of the information contained in Section III (a)-(b) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from TK Services' records, TK Services' records will control unless you are able to provide documentation that establishes that TK Services' records are mistaken. If there is a dispute about whether TK Services' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.

EXHIBIT 2

EXHIBIT 2

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

October 28, 2020

VIA LWDA WEBSITE

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

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Elaine Alston
COPENBARGER & ASSOCIATES
27201 Puerta Real, Suite 300
Mission Viejo, California 92691
Attorneys for Defendant TK SERVICES, INC.

Re: *Raul Nunez v. TK Services, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Raul Nunez in claims arising from his employment with TK Services, Inc. (“Defendant”). Mr. Nunez is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an “aggrieved employee” should be considered to include all current and former non-exempt, hourly employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the present date.

Mr. Nunez, a former employee, was employed by Defendant as a non-exempt employee from approximately 1987 through around February 26, 2016. Mr. Nunez performed various duties during his employment with Defendant, including without limitation, installing and servicing temperature control units.

During his employment with Defendant, Mr. Nunez was typically scheduled to work commencing at approximately 7:30 a.m. until approximately 4:00 p.m. However, Mr. Nunez would often arrive at work and commence working prior to his scheduled start time. Despite clocking in and commencing work prior to the scheduled start of his shift, Defendant would only pay Mr. Nunez from the scheduled start of his shift, rather than from the time that he clocked in and actually began performing work for Defendant. At all relevant times, Defendant knew and/or reasonably should have known that Mr. Nunez was working and providing services to Defendant at their direction and control.

Throughout Mr. Nunez's employment with Defendant, Defendant would keep track of Mr. Nunez's time worked and would unlawfully shave his work time and/or round his work time such that he would not be fully paid for all time worked. This time-shaving/rounding practice utilized by Defendant was not even-handed over time and would almost exclusively round and shave in Defendant's favor such that Mr. Nunez was routinely underpaid for his time worked. For example, on February 19, 2016, Mr. Nunez's time records indicate he worked a portion of the day from 7:00 a.m. until 12:00 p.m., yet was only allotted 4.5 hours of work time instead of the actual 5 hours worked. There are many instances within Mr. Nunez's records indicating his time was rounded and/or shaved by Defendant and in their favor, resulting in Mr. Nunez being routinely underpaid his wages. Further, had Mr. Nunez been properly allotted all the time he actually worked, including the time unlawfully shaved/rounded and the time he worked before and after his scheduled shift, he would have often worked in excess of 8 hours in a day and/or 40 hours in a week resulting in overtime which was either not paid, or underpaid.

During Mr. Nunez's employment with Defendant, Mr. Nunez was not required to and did not keep track of and/or clock out and in for his meal periods. Rather, Defendant would instead auto-deduct thirty (30) minutes of time from Mr. Nunez's daily work time to account for meal periods regardless of whether the meal periods were actually taken, and also regardless of whether the meal periods lasted less than thirty (30) minutes. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Nunez, and also resulted in Defendant paying Mr. Nunez less than he was owed for the work he performed. Further, because Defendant was unlawfully auto-deducting from Mr. Nunez's work time thirty (30) minutes per day regardless of whether Mr. Nunez actually took a meal period and/or regardless of whether Mr. Nunez took a meal period of less than thirty (30) minutes, Defendant failed to pay Mr. Nunez for that unlawfully deducted time, resulting in unpaid minimum, straight-time and overtime wages.

Throughout Mr. Nunez's employment with Defendant, Mr. Nunez and other non-exempt employees would receive annual non-discretionary bonuses, and other forms of non-discretionary pay (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). As a result of Mr. Nunez receiving Incentive Pay, Defendant did not properly calculate Mr. Nunez's regular rate of pay for overtime purposes, thereby causing Mr. Nunez to be underpaid all of his required overtime wages.

Throughout Mr. Nunez's employment with Defendant, Mr. Nunez was not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide uninterrupted, duty-free 30-minute meal periods. Specifically, Defendant had a policy/practice of not always providing an uninterrupted, duty-free 30-minute meal period to non-exempt employees who worked shifts in excess of five hours. Specifically, the nature of Mr. Nunez's duties often required him to skip his meal period and/or take a meal period of less than thirty (30) minutes in duration. When this occurred, it was the result of Defendant's directions and not because of Mr. Nunez's own choosing. Further, Mr. Nunez was often required to commence his meal period later than the end of his fifth hour of work. Indeed, Defendant would prepare schedules which included time for taking

a lunch, and the schedules would often schedule a lunch to commence well-after the end of the fifth hour of work. Again, this was at the direction of Defendant and not because of Mr. Nunez's own choosing, and resulted in Mr. Nunez's meal period being scheduled later than the law requires. Although Mr. Nunez was not provided with all legally-compliant meal periods to which he was entitled, Defendant failed to compensate Mr. Nunez with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

In addition, throughout Mr. Nunez's employment with Defendant, Mr. Nunez was not authorized and permitted to take legally required rest periods due to Defendant's unlawful rest period policies and practices. Specifically, Defendant's required Mr. Nunez and other non-exempt employees to remain on the work premises during their rest periods, resulting in Defendant failing to relinquish control over how employees spend their time during rest periods in violation of California law.

On those occasions when Mr. Nunez was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendant failed to compensate Mr. Nunez with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for paying rest period premiums when Defendant failed to provide a legally compliant rest period.

As a result of Defendant's failure to pay all minimum, overtime and agreed-upon wages, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Nunez.

As a further result of Defendant's failure to pay all minimum, overtime and agreed-upon wages, and meal and rest period premium wages, Defendant failed to pay all wages owed to Mr. Nunez upon his separation of employment from Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendant was required to pay Mr. Nunez and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no

less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, Mr. Nunez worked overtime hours but was not properly compensated due to Defendant’s unlawful timekeeping and pay practices. As a result of these policies/practices, Mr. Nunez and other aggrieved employees were not compensated for all overtime wages on occasions when they worked over eight hours in a workday and/or 40 hours in a workweek. Further, Defendant failed to include annual non-discretionary bonuses and other forms of non-discretionary pay in the regular rate of pay for overtime purposes, thereby causing Mr. Nunez and other aggrieved employees to be underpaid for all of their required overtime wages.

Minimum Wage Violations

Defendant was required to pay Mr. Nunez and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194; 1194.2, 1197; The Wage Order 1, § 4. Mr. Nunez and other aggrieved employees were not paid for all hours worked due to Defendant’s timekeeping and compensation practices. As alleged above, Defendant maintained and maintain timekeeping policies/practices and compensation practices that regularly, systematically, and impermissibly underreport and under pay the hours worked by Mr. Nunez and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Nunez and other aggrieved employees were deprived of all required minimum wages.

Agreed-Upon Wage Violations

Defendant was required to pay Mr. Nunez and other aggrieved employees the agree-upon rate for each hour actually worked. *See* Labor Code §§ 221-223. As alleged above, Mr. Nunez and other aggrieved employees were not paid for all hours worked at the agreed-upon rate due to Defendant’s timekeeping and compensation practices. As a result of these policies/practices, which fail to compensate for all hours worked at the agreed-upon rate, Mr. Nunez and other aggrieved employees were deprived of all required agreed-upon wages.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Nunez and other non-exempt employees with all required and compliant meal periods. This was due, in part, to Defendant’s meal period practices/policies and work demands that caused Mr. Nunez and other non-exempt employees to take meal periods that were late, short, or otherwise unlawful. *See* Labor Code §§ 226.7 and 512; the Wage Order 1, § 11. Additionally, Defendant would auto-deduct thirty (30) minutes of time from Mr. Nunez’s daily work

time to account for meal periods regardless of whether the meal periods were actually taken, and also regardless of whether the meal periods lasted less than thirty (30) minutes. As a result, Mr. Nunez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission...the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

Defendant also failed to authorize and permit Mr. Nunez and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. Specifically, Mr. Nunez and other current or former non-exempt employees worked shifts in excess of 3.5 hours, and in excess of 6 hours, and were not authorized and permitted to take all required rest periods. As alleged above, Defendant maintained a policy or practice of requiring its non-exempt employees remain on the work premises during rest periods in violation of California law. As such, Mr. Nunez and other current or former employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Nunez and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum, overtime and agreed-upon wages earned, meal and rest period premiums, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant’s failure to furnish Mr. Nunez and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum, overtime and agreed-upon wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant’s reported data.

Failure to Pay All Wages Upon Termination

Defendant failed to timely pay Mr. Nunez all of his final wages at the time of termination, which include, among other things, all minimum, overtime and agreed-upon wages earned, meal and rest period premiums. Further, Mr. Nunez is informed and

believes, that as a matter of uniform policy and practice, Defendant continues to fail to pay other aggrieved employees all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendant's failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendant's willful failure to timely pay Mr. Nunez and other aggrieved employees their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due.

As an "aggrieved employee," Mr. Nunez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Nunez's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

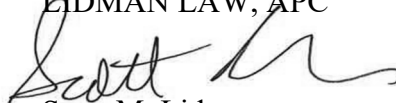
- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Nunez and other aggrieved employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Nunez and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 221-223 by failing to pay Mr. Nunez and other aggrieved employees their agreed-upon rate for their hours worked;
- d) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Nunez and other aggrieved employees;
- e) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Mr. Nunez and other aggrieved employees;
- f) Defendant violated Labor Code § 226 by failing to furnish Mr. Nunez and other aggrieved employees with accurate and compliant itemized wage statements;
- g) Defendant violated Labor Code § 204 by failing to pay Mr. Nunez and other aggrieved employees all earned wages at least twice during each calendar month;
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Nunez and other aggrieved employees; and

- i) Defendant violated Labor Code § 203 by failing to pay Mr. Nunez and other aggrieved employees for all wages owed at the time of their termination of employment.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

Dana Joudi

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, October 28, 2020 5:17 PM
To: Dana Joudi
Subject: Thank you for submission of your PAGA Case.

10/28/2020

LWDA Case No. LWDA-CM-810965-20
Law Firm : Lidman Law APC
Plaintiff Name : Raul Nunez
Employer: TK Services, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

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



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Scott

Your Last Name *

Lidman

Firm Name (if any) *

Lidman Law APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

djoudi@lidmanlaw.com

Your Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite

Your Mobile Phone Number

Your City *

El Segundo

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

90245

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Raul Nunez

Plaintiff/Aggrieved Employee Occupation *

Shop Foreman

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

TK Services, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

Employer City

Employer State	Employer Zip/Postal Code
Please select... ▼	
Employer Industry *	Employer Industry for "Other" *
Other ▼	Manufacturing

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

314

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages

Provide Details of Other Violation *

Other(Maybe Multiple)

- ☒ Other Violation

Provide Details of Other Violation *

Other(Maybe Multiple)

☒ Other Violation

Provide Details of Other Violation *

PAGA Claim Type – Check All that Apply *

☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)☒ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Billing Last Name *

Billing Email *

Billing Phone

Billing Street Name, Number and Suite/Apt *

Billing City *

Billing State *

Billing Zip/Postal Code *

Credit Card Type *

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

YYYY

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 2020-10-28 TK...A Letter.pdf

Other Attachment – (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.