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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ANALISA LEONG-CALL and ERIC
 INGALLS, individually and on behalf of all
 other similarly situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
 SANJAY LILLANEY, an individual;
 CONNIE GAMMON, an individual; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
 MOTION FOR PRELIMINARY APPROVAL
 OF CLASS ACTION AND PAGA
 SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

1 DAVID YEREMIAN & ASSOCIATES, INC.

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8 Attorneys for Plaintiff ERIC INGALLS

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on February 10, 2022, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 54 of the above-entitled Court, Plaintiffs Analisa Leong-Call and
4 Eric Ingalls, individually and on behalf of all other similarly situated individuals, hereby move for entry
5 of an Order for the following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiffs Analisa Leong-Call and Eric Ingalls as class
8 representatives for purposes of settlement;
- 9 3. Preliminarily appointing the Shimoda Law Corp., Yeremian and Associates, Inc., and United
10 Employees Law Group PC as Class Counsel for purposes of settlement;
- 11 4. Preliminarily approving the proposed class action settlement, in the amount of \$200,000,
12 which is incorporated herein by reference;
- 13 5. Preliminarily approving the application for payment to Class Counsel of attorneys' fees in
14 the amount of \$70,000 (35% of the Gross Settlement Amount);
- 15 6. Preliminarily approving the application for payment to class counsel of reasonable costs not
16 to exceed \$22,000;
- 17 7. Preliminarily and conditionally approving the Class Representative Enhancement Payment of
18 \$10,000 each to Plaintiff Analisa Leong-Call and Plaintiff Eric Ingalls;
- 19 8. Preliminarily approving the appointment of Simpluris, Inc. as the Claims Administrator and
20 for payment to Simpluris, Inc. for administering said class action settlement in an amount not
21 to exceed \$15,000;
- 22 9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
23 the total amount of \$10,000, 75% of which will be paid to the Labor and Workforce
24 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 25 10. Approving as to form and content the Notice of Proposed Class Action Settlement, and
26 Hearing Date for Final Court Approval of Settlement ("Notice of Settlement"), which
27 provide Class Members information regarding the settlement, their ability to opt out of, or
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1 object to, the class action settlement and which provides instruction on how to dispute an
2 individual's settlement allocation under the proposed settlement agreement;

3 11. Approving the proposed procedures to notify the class and determining that the proposed
4 notification procedures and process complies with class members' due process rights and
5 directing the Notice of Settlement to be sent by first class mail to Class Members;

6 12. Directing the Defendants to report employment information, including social security
7 numbers, to the Claims Administrator to administer the settlement proceeds;

8 13. Scheduling a fairness hearing on the question of whether the proposed settlement should be
9 finally approved as fair, reasonable, and adequate;

10 14. Directing that any residue from settlement checks that were not cashed by the check cashing
11 deadline be donated 50/50 to Capital Pro Bono, Inc. and the Center For Workers' Rights
12 under the doctrine of *cy pres*;

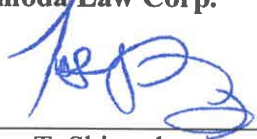
13 15. Preliminarily and conditionally approving and adopting the Proposed Order and its
14 implementation schedule, which is filed herewith and incorporated by reference.

15 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
16 2699(l), and California Rule of Court 3.769 and 3.764, on the grounds that the proposed class action and
17 Private Attorneys General Act settlement is fair, reasonable, and adequate as to all class members and
18 should be approved by the Court. This motion will be based on the notice of motion, memorandum of
19 points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of David Yeremian, the
20 Declaration of Walter Haines, the Declaration of Alvin B. Lindsay, the Declaration of Analisa Leong-
21 Call, the Declaration of Eric Ingalls, exhibits, the record and files of this case, and any further oral or
22 documentary evidence introduced at the hearing of this motion.

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

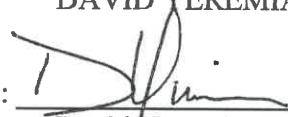
1 Dated: December 21, 2021

Shimoda Law Corp.

2
3 By: 

4 Galen T. Shimoda
5 Justin P. Rodriguez
6 Brittany V. Berzin
7 Attorneys for Plaintiff Leong-Call

DAVID YEREMIAN AND ASSOCIATES, INC.

8 By: 

9 David Yeremian
10 Alvin B. Lindsay
11 Attorneys for Plaintiff Ingalls

12 UNITED EMPLOYEES LAW GROUP, PC

13
14 By: 

15 Walter Haines
16 Attorneys for Plaintiff Ingalls
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 DOES 1 to 100, inclusive,

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Reservation No.: 2612810

CLASS ACTION

**MEMORANDUM OF POINTS &
 AUTHORITIES IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION AND PAGA SETTLEMENT**

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

This Motion is brought seeking preliminary approval of a wage and hour class action settlement in the gross amount of \$200,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release). Plaintiffs Analisa Leong-Call and Eric Ingalls (“Plaintiffs”) brought this class action individually and on behalf of other similarly situated employees employed by Defendants MRB Foods Inc., Sanjay Lillaney and Connie Gammon (“Defendants”). Plaintiffs worked for Defendants during the claims period and were subject to all the same policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiffs’ Operative Complaint); Declaration of Analisa Leong-Call (“Decl. Leong-Call”) ¶ 2; Declaration of Eric Ingalls (“Decl. Ingalls”) ¶ 2.

Plaintiffs have alleged that Defendants are liable for failure to pay minimum wages and for all hours worked, failure to pay overtime, meal period violations, rest period violations, wage statement violations, untimely payment of wages, failure to pay final wages, failure to reimburse expenses, unfair competition, failure to pay accrued vacation, failure to provide paid sick leave, failure to keep accurate records and unlawfully collecting or receiving wages in violation of Labor Code section 221. *See generally* Exhibit B. Plaintiffs have also alleged Defendants are liable for a civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. *See id.*; Exhibit C (Plaintiffs’ Ltrs. to the LWDA Regarding PAGA Claims). These violations primarily stem from Plaintiffs’ allegations that Defendants violated California law by 1) failing to incorporate the value of nondiscretionary bonuses into putative class members’ regular rates of pay for the purpose of calculating overtime wages and paid sick time; 2) failing to pay putative class members for all hours worked, including overtime hours (requiring off the clock work pre and post shift and requiring clock outs for meal periods not taken); 3) contacting putative class members on their personal cellphones during shifts and failing to reimburse for cellphone use; 4) requiring putative class members to use their personal vehicles to drive to other restaurants and make bank deposits and failing to reimburse mileage; 5) failing to authorize and permit all meal and rest periods (missed lunches, late lunches, and no second lunch for shifts over 10 hours); and 6) failing to pay accrued but unused vacation wages upon separation. *See* Exhibit B. Plaintiffs have contended that this is a meritorious class action lawsuit and that this case is appropriate

1 for class certification for settlement purposes as the requisites for class certification in this case can be
2 satisfied. *See* Exhibit B.

3 Defendants have denied all of Plaintiffs' allegations in their entirety and any liability or
4 wrongdoing of any kind. *See* Declaration of Justin P. Rodriguez ("Decl. Rodriguez"), ¶ 5. Defendants
5 have denied that this case is appropriate for class certification other than for purposes of settlement and
6 that Plaintiffs would have difficulty proving class certification is proper here. *See id.* However, subject
7 to approval by the Court, the parties have been able to compromise and settle all asserted claims for
8 monetary compensation as a result of extensive investigations, informal document and data exchanges,
9 and extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiffs'
10 counsel is convinced that the proposed settlement is in the best interest of the putative class based on
11 the discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See*
12 Decl. Rodriguez, ¶¶ 3, 6-10; Declaration of David Yeremian ("Decl. Yeremian"), ¶¶ 15-17; Declaration
13 of Walter Haines ("Decl. Haines"), ¶ 2. The prospect of potential class certification issues and the
14 uncertainty of class certification, difficulties of complex litigation, the lengthy process of establishing
15 specific damages and various possible delays and appeals were carefully considered by Plaintiffs and
16 Plaintiffs' counsel in agreeing to the proposed settlement. *See id.*

17 It is well within the discretion of this Court to grant preliminary and conditional approval of the
18 Agreement, which satisfies all of the criteria for preliminary settlement approval under California law.
19 Accordingly, Plaintiffs request that the Court: (1) provisionally and conditionally certify the proposed
20 settlement class; (2) grant preliminary and conditional approval of the proposed Agreement (Exhibit
21 A); (3) set dates for and direct distribution to the class of the Notice of Settlement (Exhibit F), which
22 provides Class Members information regarding the settlement, including information regarding the
23 opportunity to opt-out of, or object to, the settlement and notifies each class member of their expected
24 pro rata share of the settlement; and (4) adopt the implementation schedule contained in the proposed
25 order and schedule a final approval hearing.

26 **II. PROCEDURAL AND LITIGATION HISTORY**

27 Plaintiffs exhausted administrative remedies under the PAGA by providing notice of the claims
28 and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3;

Decl. Yeremian, ¶ 11. On or about October 14, 2020, Plaintiff Leong-Call filed a class action Complaint in Sacramento County Superior Court. Plaintiff Leong-Call filed a First Amended Complaint on approximately December 21, 2020 to add a PAGA cause of action based on the violations alleged in the October 5, 2020 notice to the LWDA. On or about November 19, 2020, Plaintiff Ingalls filed a class action Complaint in Sacramento County Superior Court. Plaintiff Ingalls filed a First Amended Complaint on approximately June 14, 2021 to add a PAGA cause of action based on the violations alleged in the October 5, 2020 notice to the LWDA. Plaintiffs filed a Second Amended Complaint on November 8, 2021. *See* Decl. Rodriguez, ¶ 3; Decl. Yeremian, ¶¶ 11, 14; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiffs thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.*; Decl. Yeremian, ¶¶ 13, 15-17. Plaintiffs worked during the time all of Defendants' policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Leong-Call ¶¶ 3, 5; Decl. Ingalls ¶¶ 3, 5. The parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶ 7; Decl. Yeremian, ¶ 13. The information allowed Plaintiffs to determine the extent and frequency of any violations in accordance with Plaintiffs' contentions and create an accurate damages model to assess the reasonableness of any settlement. *See* Decl. Rodriguez, ¶ 7.

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1 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

2 **a. Plaintiffs and Defendants Engaged in Extensive Arm's Length Negotiations**

3 The final settlement occurred only after extended, and sometimes contentious, arm's length
4 negotiations. Over the course of nearly one year, Plaintiffs have been investigating the claims and
5 discussing with Defendants' counsel the merits of the claims and certification issues present in this
6 case. *See* Decl. Rodriguez, ¶¶ 6-10. The parties exchanged substantial amounts of information and
7 legal analysis regarding the asserted claims. *See id.* Then, only after nearly one year of litigation and
8 negotiation, which included a full day mediation with Francis J. Ortman III, the parties able to reach a
9 mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties
10 agreed to a Gross Settlement Amount of \$200,000. *See* Exhibit A.

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

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

13 1. The following individuals are covered by the Settlement (*See* Exhibit A, ¶¶ 1.2, 1.8, 1.9,
14 1.26):

15 Current and former non-exempt employees of Defendants in California
16 from October 5, 2019 up to November 6, 2021.

17 2. Pay Gross Settlement Amount of \$200,000, exclusive of the employer's share of payroll
18 taxes, to resolve and release the claims alleged in the Complaint. *See id.* at ¶¶ 5.1, 5.2. No portion of
19 the Gross Settlement Amount will revert to Defendants. *See id.* at ¶ 5.6. Aggrieved Employees will
20 still be paid their share of the PAGA Payment regardless of whether they opt out of being Class
21 Members. *See id.* at 7.5.1.

22 3. The parties agree that up to \$10,000, each, for Plaintiffs Analisa Leong-Call and Eric
23 Ingalls will be paid as a Class Representative Enhancement Payment. This amount will be in addition
24 to any amount Plaintiffs may be entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

25 4. The parties agree that the cost of administering this class action settlement shall be paid
26 from the settlement proceeds. Subject to Court approval, the parties have selected Simpluris, Inc. to act
27 as the class action claims administrator, who has provided a maximum cost estimate of \$9,400 to
28 administer the class settlement. *See* Exhibit D (Simpluris, Inc. Quote). The difference between any

1 actual administration costs and the \$15,000 allocated under the Agreement, if any, will be paid to Class
2 Members on a pro rata basis. *See* Exhibit A at ¶ 5.3.

3 5. The parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
4 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
5 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
6 5.5.

7 6. The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount
8 (\$70,000) will be paid for Plaintiffs' attorneys' fees incurred in the litigation of this case. Defendants
9 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
10 Additionally, the parties agree that Plaintiffs will also be entitled to the actual litigation costs as
11 approved by the Court in an amount not to exceed \$22,000. *See id.* The difference between any actual
12 costs and the \$22,000 will be redistributed to Class Members on a pro rata basis. *See* Exhibit A, ¶ 5.2.
13 The proposed notice to be sent to class members will state this information. *See* Exhibit F.

14 7. Any Claims Administrator Costs, any amounts paid for attorneys' fees and costs, the
15 Class Representative Enhancement Payments, and PAGA Payment will be paid out from the Gross
16 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

17 8. In consideration for the value received in the Agreement, Class Members who fail to
18 timely opt-out of this settlement will waive all Qualified Claimant's Released Claims as set forth in the
19 Agreement. *See* Exhibit A, ¶¶ 1.30-1.31. Aggrieved Employees will waive all Released PAGA Claims
20 as set forth in the Agreement regardless of whether they opt out of being a Class Member. *See id.* at
21 1.33, 7.5.1.

22 9. In consideration for the value received in the settlement agreement, class members who
23 fail to timely opt-out of this settlement will waive all claims contained in the operative Complaint, and
24 any additional wage and hour claims that could have been brought based on the facts alleged in the
25 operative Complaint, through the Class Period. *See* Exhibit A, ¶ 1.30-1.31.

26 10. For any portion of the Net Settlement Sum or PAGA Payment allocated to Qualified
27 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
28

1 settlement checks within 120 days, the remaining amount shall be paid 50/50 to Capital Pro Bono, Inc.
2 and the Center for Workers' Rights under the doctrine of *cypres*. See Exhibit A, at ¶ 5.6.

3 **c. Allocation of Settlement Funds**

4 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
5 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
6 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
7 Enhancement Payment to the Class Representatives, the Claims Administrator Costs, and the PAGA
8 Payment. Each Class Member's share will be determined by dividing their total weeks worked within
9 the Class Period by the total weeks worked by all Class Members within the Class Period. That
10 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
11 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
12 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
13 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
14 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
15 Aggrieved Employee's individual share. See Exhibit A, at ¶ 5.8.

16 **V. ARGUMENT**

17 **a. Class Action Settlements are Subject to Court Review and Approval Under the**
18 **California Rules of Court**

19 A class action may not be dismissed, compromised, or settled without Court approval and the
20 decision to approve or reject a settlement is committed to the Court's sound discretion. See Cal. Rules
21 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
22 4th 224, 234-35 (2001); see also Cal. Lab. Code §§ 2699(l)(2) (requiring Court review of PAGA
23 settlements). However, courts should give "proper deference to the private consensual decision of the
24 parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated
25 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
26 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
27

28 ¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. See *Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
2 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms
3 agreeable to all parties, a court should disapprove of the settlement “only with considerable
4 circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
5 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
6 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
7 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

8 **b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

9 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
10 determine only whether the proposed settlement is within the range of possible approval and whether
11 notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is
12 warranted. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls
13 within “the range of reasonableness,” it should grant preliminary approval of the class action settlement.
14 *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90
15 (1994). To make the fairness determination, the Court must consider several factors, including:

16 the strength of the Plaintiff’s case, the risk, expense, complexity and likely
17 duration of further litigation, the risk of maintaining class action status
18 through trial, the amount offered in settlement, the extent of discovery
19 completed and the stage of the proceedings, the experience and views of
counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.

20 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its
21 analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists
22 where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery
23 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
24 litigation; and (4) the percentage of objectors is small.” *Id.* at 1802.

25 **i. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length**
26 **Negotiations Between the Parties**

27 Settlement in this case was reached only after litigation and extensive arm’s length negotiations
28 lasting nearly one year, which included a full day mediation with Francis J. Ortman III. *See Decl.*

1 Rodriguez, ¶¶ 6-10; Decl. Yeremian, ¶¶ 13, 15-17. At all times, the negotiations were adversarial and
2 contentious, although still professional in nature. *See id.* Further, while Plaintiffs contend they would
3 ultimately prevail on the claims and the issue of certification, this is not a certainty and there is
4 substantial risk in proceeding to further litigation. *See id.* at ¶¶ 6-10; Decl. Yeremian, ¶ 15-17. The
5 ability to secure a guaranteed settlement now and ensure class members receive some compensation,
6 rather than proceed to further litigation and potentially recover nothing, was a motivating factor in
7 reaching this settlement. *See id.*

8 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
9 **Information to Enter Into an Informed and Reasonable Settlement**

10 The parties were in possession of all necessary information during the negotiations. The parties
11 engaged in substantial informal discovery and exchange of documents, including a representative
12 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the
13 entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the
14 class claims and helped thoroughly vet the extent of Plaintiffs' claims against Defendants and create an
15 accurate damages model. *See* Decl. Rodriguez, ¶¶ 6-10; Decl. Yeremian, ¶ 13. Plaintiffs were in
16 possession of this information prior to calculating the potential damages in this case. *See id.* As a
17 result, Plaintiffs were able to make a reasonable estimation of Defendants' potential liability. *See* Decl.
18 Rodriguez, ¶¶ 6-10. For these reasons, the settlement now before the Court was reached at a stage
19 where "the parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient
20 to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

21 **iii. Plaintiffs' Counsel is Experienced in Similar Litigation**

22 Plaintiffs' counsel has considerable experience in class actions and wage and hour litigation.
23 Plaintiffs' counsel has brought and is currently bringing several wage and hour class and/or PAGA
24 actions. Thus, Plaintiffs' counsel is qualified to evaluate the class claims, value of settlement versus
25 moving for certification and going to trial, and the viability of possible affirmative defenses. *See* Decl.
26 Rodriguez, ¶¶ 11-18; Decl. Yeremian, ¶¶ 3-9; Decl. Haines, ¶¶ 3-8; Declaration of Alvin B. Lindsay
27 ("Decl. Lindsay"), ¶¶ 3-12. Plaintiffs' counsel believes that the settlement is fair and reasonable in
28 light of the complexities of the case, the uncertainties of class certification and litigation, and the

1 secured benefit to the class. *See* Decl. Rodriguez. ¶ 6; Decl. Yeremian, ¶ 15-17.

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

4 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
5 the records and facts of this case, Plaintiffs have secured a gross recovery of approximately 5.5% and a
6 net recovery of approximately 2% of the claims' maximum likely value. *See* Decl. Rodriguez at ¶¶ 9-
7 10. Additionally, the average net award per class member is approximately \$74.52. *See id.* This
8 settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile
9 ranges of the total available damages that have been approved in other class settlements. *See Wershba,*
10 *91 Cal. App. 4th at 246, 250; Rebney v. Wells Fargo Bank, 220 Cal.App.3d 1117, 1139 (1990); Officers*
11 *for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 628 (9th Cir. 1982); see also In re Omnivision*
12 *Technologies, Inc., 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of*
13 *6% of maximum potential recovery after reduction for attorney's fees was higher than median*
14 *percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000*
15 *through 2002); Bravo v. Gale Triangle, Inc., 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving*
16 *a settlement where the net recovery to class members was approximately 7.5% of the projected*
17 *maximum recovery amount); Avila v. Cold Spring Granite Co., 2017 U.S. Dist. LEXIS 130878 (E.D.*
18 *Cal. 2017): (approving a settlement with a gross recovery of 11% of the projected maximum damages*
19 *available and a net recovery of approximately 6.7% of the projected maximum recovery);*
20 *Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where*
21 *the gross recovery was approximately 8.5% of the projected maximum recovery).*

22 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

23 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
24 information be presented to the Court, acting as a fiduciary for the absent class members "to ensure that
25 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
26 being released, discounted by the risks and expenses of attempting to establish and collect on those
27 claims by pursuing the litigation" *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
28 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to

1 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
2 risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an
3 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
4 claims provided there is a record that allows “an understanding of the amount that is in controversy and
5 the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record
6 before the trial court was sufficient, having included the number of class members, payroll data,
7 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
8 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
9 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
10 that is in controversy within the meaning of *Kullar*.” *Id.*

11 Plaintiffs similarly relied upon payroll data and Class Members data to determine the realistic
12 potential damages suffered by the class as a whole. *See* Decl. Rodriguez, ¶¶ 6-10; Decl. Yermian, ¶ 13.
13 This analysis allowed Plaintiffs to determine the extent and frequency of potential violations on all
14 claims as to all Class Members. *See id.* Ultimately, Plaintiffs secured a percentage of the total demand
15 for the putative class that is within the range of what has been found to be sufficient in several other
16 cases. *See, supra*, Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at
17 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a
18 settlement of \$11.7 million where the maximum range of damages was \$5,000 for each of the alleged
19 300,000 instances of unlawful recording violations (\$1.5 billion), equaling approximately .78% of the
20 total demand and approximately \$800 per class member). This settlement represents a reasonable
21 compromise given the percentage of the total demand that was secured, the average recovery per class
22 member, the Court’s ability and discretion to cut PAGA penalties, and the uncertainty of class
23 certification. *See* Decl. Rodriguez, ¶¶ 9-10; Decl. Yermian, ¶¶ 15-17.

24 **vi. The Enhancement Payment to the Named Plaintiffs for Plaintiffs' Services to the**
25 **Putative Class Is Reasonable and Routinely Awarded by Courts**

26 The Enhancement Payment to the named Plaintiffs is intended to recognize the time and effort
27 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
28 compensate named plaintiffs for the services they provide and the risks they incurred during the course

1 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
2 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
3 recognition of the services they provided to the class by responding to discovery, participating in the
4 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
5 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
6 enhancement payment).

7 In this case, Plaintiffs provided and explained documents, being available at all times to discuss
8 the case with Plaintiffs' counsel. *See Decl. Rodriguez*, ¶ 7; *Decl. Yeremian*, ¶ 13; *Decl. Leong-Call*, ¶
9 5; *Decl. Ingalls*, ¶ 5. Plaintiffs spent a significant amount of time pursuing this litigation for the benefit
10 of all Class Members. *See id.* Plaintiffs brought this action knowing there would be a delay in any
11 payment as the litigation progressed, rather than proceeding on individual claims in front of the
12 California Labor Commissioner. *See id.* Payment of \$10,000, each, to Plaintiffs is appropriate given
13 the risk, assistance, time required in bringing this case and resolution of this case.

14 **vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
15 **and Customarily Approved by Courts**

16 California state and federal courts have recognized that when a litigant's efforts create or
17 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
18 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
19 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other
20 than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*
21 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
22 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
23 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
24 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
25 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
26 burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
27 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
28

1 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
2 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

3 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
4 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
5 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Grawly*, 886
6 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a certified class
7 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
8 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
9 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
10 class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
11 Plaintiffs and Plaintiffs' counsel were able to negotiate on behalf of the class, and the fee can be shifted
12 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
13 fund. As set forth in the fee award examples provided below for the Court's reference, it is an accepted
14 practice in wage and hour class action settlements to award attorneys' fees based on a percentage of the
15 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
16 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
17 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

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

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

28 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiffs'

1 request of thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates
2 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
3 excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379
4 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634;
5 *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v.*
6 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v.*
7 *Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC
8 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern
9 District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should
10 consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the
11 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and
12 (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur.*
13 *Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555,
14 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members to class counsel's fee
15 request further supports finding the fee request reasonable").

16 These factors support Plaintiffs' request for reasonable attorneys' fees. The typical percentage
17 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
18 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
19 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiffs'
20 request of 35% falls within these typical fee arrangements. *See Decl. Rodriguez*, ¶ 19. The quality of
21 counsel and the average size of settlement payments to Class Members and Aggrieved Employees also
22 support the fee request when compared to other settlements courts have considered as good results. *See*
23 *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class
24 Members will receive an average of approximately \$198.70, with the highest payment to a Class
25 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
26 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees
27 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the
28 results achieved in this case were very favorable. Class members are provided with immediate

1 monetary relief, with an average award of around several hundred dollars and a minimum award of
2 \$50”).

3 **c. Provisional Certification of the Class is Appropriate**

4 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
5 defined community of interest in the questions of law and fact involved affecting the parties to be
6 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
7 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
8 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
9 Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

10 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

11 The proposed settlement class is ascertainable because all putative class members can be readily
12 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th
13 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
14 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 390 individuals
15 who fall within the definition of Class Member, which makes joinder of all members impracticable.
16 *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531
17 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to
18 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
19 these requirements are satisfied.

20 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

21 The commonality requirement is met when there are questions of law or fact regarding the class
22 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
23 factual questions exist; Plaintiffs need not show that all issues in the litigation are identical. *See*
24 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
25 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
26 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
2 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
3 named representative are typical of those of the class, though “they need not be substantially identical.”
4 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

5 The common questions of law and fact in this case stem from Plaintiffs’ contention that
6 Defendants violated California law by 1) failing to incorporate the value of nondiscretionary bonuses
7 into putative class members’ regular rates of pay for the purpose of calculating overtime wages and
8 paid sick time; 2) failing to pay putative class members for all hours worked, including overtime hours
9 (requiring off the clock work pre and post shift and requiring clock outs for meal periods not taken); 3)
10 contacting putative class members on their personal cellphones during shifts and failing to reimburse
11 for cellphone use; 4) requiring putative class members to use their personal vehicles to drive to other
12 restaurants and make bank deposits and failing to reimburse mileage; 5) failing to authorize and permit
13 all meal and rest periods (missed lunches, late lunches, and no second lunch for shifts over 10 hours);
14 and 6) failing to pay accrued but unused vacation wages upon separation. *See Exhibit B.* The waiting
15 time penalties, wage statement claims, unfair competition, and PAGA claims are derivative of these
16 violations. *See id.* Plaintiffs and the Class Members seek the same remedies under state law. Under
17 these specific circumstances, the commonality and predominance requirements are satisfied. Regarding
18 the typicality requirement, Plaintiffs contends they suffered from the same unlawful policies, treatment,
19 and circumstances as Class Members did, will request the same remedies, and will rely on the same
20 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
21 satisfied for settlement purposes.

22 **iii. The Adequacy Requirement is Met**

23 The adequacy of representation requirement is met if the named representative and counsel have
24 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
25 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
26 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed settlement,
27 Plaintiffs and the putative class members will receive a pro rata share of the settlement based on the
28 number of workweeks they worked for Defendants. *See Exhibit A.* Finally, any settlement class

1 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
2 of workweeks stated in the Notice of Settlement (Exhibit F).

3 There is no conflict of interest between Plaintiffs and Class Members. Plaintiffs and Plaintiffs'
4 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
5 Plaintiffs' counsel, with Plaintiffs' assistance, thoroughly investigated the claims made in this case by
6 speaking with Plaintiffs and reviewing substantial amounts of documents. Plaintiffs' counsel thereafter
7 engaged Defendants' counsel in settlement discussions over the course of nearly one year. Moreover,
8 Plaintiffs' counsel has experience defending and bringing wage and hour claims. *See* Decl. Rodriguez,
9 ¶¶ 11-18, Decl. Yermian, ¶ 3-9; Decl. Haines, ¶ 3-8; Decl. Lindsay, ¶¶ 3-12. Because Plaintiffs'
10 counsel has vigorously pursued Plaintiffs' and the class members' claims, the adequacy requirement is
11 met. *See generally* Decl. Rodriguez.

12 VI. CONCLUSION

13 For all of the foregoing reasons, Plaintiffs respectfully requests that this Court preliminarily and
14 conditionally certify the class for settlement purposes; grant preliminary and conditional approval to the
15 proposed settlement, including the Plaintiffs' Class Representative Enhancement Payments, the
16 payment to the LWDA under PAGA, and Class Counsel's application for reasonable attorneys' fees
17 and costs; approve the Notice of Settlement, including the proposed deadlines for opting-out of and
18 objecting to the settlement; and schedule the final settlement approval hearing. A copy of Plaintiffs'
19 proposed order is being filed concurrently herewith.

20
21 Dated: December 21, 2021

Shimoda Law Corp.

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25 Justin P. Rodriguez
26 Brittany V. Berzin
27 Attorneys for Plaintiff Leong-Call
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6 *Caption continued on next page*

7
8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SACRAMENTO**

10
11 ANALISA LEONG-CALL and ERIC
 12 INGALLS, individually and on behalf of all
 other similarly situated employees,

13 Plaintiffs,

14 vs.

15 MRB FOODS INC., a California Corporation;
 16 SANJAY LILLANEY, an individual;
 17 CONNIE GAMMON, an individual; and
 DOES 1 to 100, inclusive,

18 Defendants.

Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
 SUPPORT OF PLAINTIFFS' MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION AND PAGA SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

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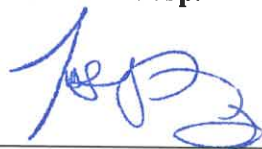
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8 Attorneys for Plaintiff ERIC INGALLS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiffs' Operative Complaint
C	Plaintiffs' Letters to the LWDA Regarding PAGA Claims
D	Simpluris, Inc. Quote
E	Plaintiffs' Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: December 21, 2021

Shimoda Law Corp.

By: 

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EXHIBIT A

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Caption cont. on next page

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

ANALISA LEONG-CALL and ERIC
INGALLS, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
SANJAY LILLANEY, an individual; CONNIE
GAMMON, an individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: 34-2020-00287486

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: October 14, 2020
FAC Filed: December 21, 2020
SAC Filed: November 8, 2021
Trial Date: None Set

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This Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) is made and entered into between the Plaintiffs Analisa Leong-Call and Eric Ingalls (“Plaintiffs”), on behalf of themselves, the Labor and Workforce Development Agency, and Aggrieved Employees, and Defendants MRB Foods Inc., Sanjay Lillaney and Connie Gammon (“Defendants”). This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

1. DEFINITIONS

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

1.1 “Action” means the above stated lawsuit, *Leong-Call, et al. v. MRB Foods Inc., et al.*, Sacramento County Superior Court, Case No. 34-2020-00287486.

1.2 “Aggrieved Employee(s)” means current and former non-exempt employees of Defendants in California during the PAGA Claim Period.

1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation Regarding Class Action and PAGA Settlement and Release.

1.4 “Claim Amount” means an individual Qualified Claimant’s and Aggrieved Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21, 1.25, 5.5, and 5.8.

1.5 “Claims Administrator” means and refers to Simpluris, Inc., the third-party entity that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.

1.6 “Claims Administrator Costs” means the fees and expenses reasonably incurred by the Claims Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class

Members and/or Aggrieved Employees, Class Counsel, and Defendants' Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

1.7 "Class Counsel" means Galen T. Shimoda and Justin P. Rodriguez, of the Shimoda Law Corp., David Yeremian and Alvin B. Lindsay of Yeremian & Associates, Inc., and Walter Haines of United Employees Law Group PC.

1.8 "Class Member(s)" means current and former non-exempt employees of Defendants in California during the Class Period.

1.9 "Class Period" means from October 5, 2019 to up to either (1) the Preliminary Approval Date, or (2) November 6, 2021, whichever is earlier.

1.10 "Class Representatives" means Plaintiffs Analisa Leong-Call and Eric Ingalls.

1.11 "Class Representatives' Released Claims" means any and all complaints, action, claim, right, charge, demand, liability, obligation, promise and/or agreement of any kind or nature that the Plaintiffs have now, or might hereafter claim to have against Defendants which can be released as a matter of law. This release includes a Civil Code section 1542 waiver.

1.12 "Complaint" means the operative Complaint on file in the Action with the Court.

1.13 "Court" means the Sacramento County Superior Court.

1.14 "Defendants" means MRB Foods Inc., Sanjay Lillaney and Connie Gammon.

1.15 "Defendants' Counsel" means McCormick Barstow LLP.

1.16 "Enhancement Payment" means the amount approved by the Court to be paid to the Class Representatives in recognition of the time and effort expended on behalf of Class Members for the benefit

of Class Members, which is in addition to any Claim Amount paid to the Class Representatives as a Qualified Claimant.

1.17 "Effective Date" means when a signed order granting final approval this Agreement has been filed, provided there are no objections to the settlement that are not later withdrawn before final approval is granted. If there are any objections that are not later withdrawn before final approval is granted, the Effective Date shall be either (a) the 60th calendar day after a signed order granting final approval of this Agreement has been filed provided no motion to vacate the judgment, appeal, writ or other appellate proceeding having been filed; or (b) the seventh (7th) calendar day after any motion to vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of this Agreement and there is no right to pursue further remedies or relief, whichever is later.

1.18 "Final Approval Date" means the date a signed order granting final approval of this Agreement is filed with the Court.

1.19 "Gross Settlement Amount" is the sum of Two Hundred Thousand Dollars and No Cents (\$200,000).

1.20 "LWDA" means the California Labor and Workforce Development Agency.

1.21 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for distribution to Qualified Claimants, as described in this Agreement, after deduction of Plaintiffs' attorneys' fees and litigation costs, Claims Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representatives.

1.22 "Notice of Settlement" means the document substantially in the form attached hereto as Exhibit 1.

1.23 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.24 "PAGA" means Private Attorneys General Act.

1.25 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.26 "PAGA Claim Period" means October 5, 2019 to up to either (1) to the Preliminary Approval Date or (2) November 6, 2021, whichever is earlier.

1.27 "Parties" mean Defendants and Plaintiffs.

1.28 "Preliminary Approval Date" means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

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

1.30 "Qualified Claimant" means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.31 "Qualified Claimant's Released Claims" means all claims contained in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

1.32 "Qualifying Workweeks" are weeks worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members, workweeks shall be defined as the total length of service (in days) in California during the Class Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall be construed from Defendants' records.

1.33 "Released PAGA Claims" means all Private Attorneys General Act claims for civil penalties contained in Plaintiffs' letters to the LWDA and/or operative Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

1.34 "Released Parties" means Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, insurers, and any one acting on their behalf.

2. DESCRIPTION OF THE LITIGATION

On or about October 5, 2020, Plaintiff Leong-Call sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime, wage statement violations, failure to pay final wages, unfair competition, failure to reimburse expenses, failure to pay accrued vacation, meal period violations and rest period violations, and failure to provide paid sick leave. On or about November 19, 2020 Plaintiff Ingalls sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay minimum wages and for all hours worked, failure to pay overtime, meal period violations, rest period violations, wage statement violations, untimely payment of wages, failure to pay final wages, failure to reimburse expenses, unfair competition, failure to keep accurate records and unlawfully collecting or receiving wages in violation of Labor Code section 221.

2.1 The LWDA did not respond to the notices within the statutorily required time frame and, as such, Plaintiffs became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 On or about October 14, 2020, Plaintiff Leong-Call filed a class action Complaint in Sacramento County Superior Court. Plaintiff Leong-Call filed a First Amended Complaint on approximately December 21, 2020 to add a PAGA cause of action based on the violations alleged in the October 5, 2020 notice to the LWDA. On or about November 19, 2020, Plaintiff Ingalls filed a class action Complaint in Sacramento County Superior Court. Plaintiff Ingalls filed a First Amended Complaint on approximately June 14, 2021 to add a PAGA cause of action based on the violations alleged in the October 5, 2020 notice to the LWDA. Plaintiffs filed a Second Amended Complaint on November 8, 2021.

2.3 Through informal discovery, Defendants and Defendants' Counsel provided Class Counsel with copies of all applicable versions of its policies and procedures, employee handbook, information on Class Members including, but not limited to, Class Members' dates of employment, job titles, restaurant location they worked at, total number of Class Members, as well as timecard data and paystubs for a randomly selected sample of Class Members.

2.4 On September 7, 2021, the Parties participated in a lengthy mediation with private mediator Francis J. Ortman III. At the conclusion of the mediation, the Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

2.5 Discussions between Plaintiffs and Class Counsel, between counsel for the Parties, document productions, extensive legal analysis, the provision of information by Defendants to Plaintiffs and the detailed analysis of the records, including expert analysis, have permitted each side to assess the relative merits of the claims and the defenses to those claims.

2.6 In the Action, Plaintiffs contend that Defendants violated California law by 1) failing to incorporate the value of nondiscretionary bonuses into putative class members' regular rates of pay for the purpose of calculating overtime wages and paid sick time; 2) failing to pay putative class members for all hours worked, including overtime hours (requiring off the clock work pre and post shift and requiring clock outs for meal periods not taken); 3) contacting putative class members on their personal cellphones during shifts and failing to reimburse for cellphone use; 4) requiring putative class members to use their personal vehicles to drive to other restaurants and make bank deposits and failing to reimburse mileage; 5) failing to authorize and permit all meal and rest periods (missed lunches, late lunches, and no second lunch for shifts over 10 hours); and 6) failing to pay accrued but unused vacation wages upon separation. Defendants have denied each of Plaintiffs' claims and Defendants have denied that this Action is appropriate for class certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the underlying claims and the class data supporting these claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability based on Defendants' factual and legal contentions and defenses.

2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiffs, Class Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the

Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiffs, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

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

4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

1 4.2 Individuals entitled to recover under this Agreement will include only those individuals
2 who are identified as being within the scope of this Agreement under Section 4.1.

3 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
4 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
5 did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data
6 request to the Claims Administrator. The data request must contain all of the following information: (a)
7 the full name and, if applicable, Social Security Number of the individual making the request; (b) the
8 name used by such employee as of the time his or her employment with Defendants ended; (c) the years
9 during which such employee was employed with Defendants; and (d) a return address to which a response
10 may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
11 otherwise submitted to the Claims Administrator such that it is received before the conclusion of the
12 Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event
13 more than two business days) transmit the data requests to Defendants' Counsel and request that
14 Defendants review their records.

15 4.4 If Defendants do agree that the person listed in a data request is a Class Member and/or
16 Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person
17 who submitted the data request, at the address designated for that purpose in the data request. All
18 provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements
19 sent in response to data requests, and any person who submits a data request and is sent a Notice of
20 Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved
21 Employee for all other purposes.

22 4.5 If Defendants do not agree that the person listed in a data request is a Class Member and/or
23 Aggrieved Employee, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute
24 in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
25 dispute. Defendants' records shall control unless the individual submitting the data request provides
26 persuasive evidence to doubt the accuracy of those records (such as wage statements or W-2s). Each data
27 request dispute that Defendants' Counsel and Class Counsel cannot timely resolve shall be resolved by the
28 Claims Administrator. The Claims Administrator must accept and weigh all the evidence provided in a

1 good faith attempt to resolve the dispute. The Claims Administrator must resolve any dispute submitted
2 to it within seven (7) calendar days after Defendants' Counsel and Class Counsel submit the dispute to the
3 Claims Administrator. The decision by the Claims Administrator shall be final and there shall be no right
4 of appeal.

5 **5. TERMS OF THE SETTLEMENT**

6 The Parties agree as follows:

7 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
8 Section 6, Defendants shall pay the Gross Settlement Amount (\$200,000). Funding of the Gross
9 Settlement Amount shall occur within twenty-one (21) days after the Effective Date. The Gross
10 Settlement Amount includes payments to Qualified Claimants, Aggrieved Employees, all attorneys' fees,
11 costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs
12 incurred in documenting the Agreement, administering the Agreement (including Claims Administrator
13 Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class
14 Representatives and the PAGA Payment. Any monies necessary to satisfy Defendants' tax obligations
15 (e.g. employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to
16 Qualified Claimants will be paid in addition to the Gross Settlement Amount.

17 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of
18 35% or \$70,000 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
19 Defendants have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does
20 not exceed the \$70,000 threshold. Class Counsel will also be entitled to reimbursement for advanced
21 litigation expenses not to exceed \$22,000, which shall be paid from the Gross Settlement Amount.
22 Defendants have agreed to not oppose Class Counsel's request for reimbursement for advanced litigation
23 expenses so long as they do not exceed the \$22,000 threshold. The Claims Administrator will issue Class
24 Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that
25 the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts
26 not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Qualified
27 Claimants on a pro rata basis.

1 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
2 Settlement Amount and shall not exceed \$15,000. The difference between any actual costs and the
3 allocated \$15,000 shall be added to the Net Settlement Amount.

4 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiffs, shall apply to the Court for
5 an Enhancement Payment to the Class Representatives in an amount not to exceed Ten Thousand Dollars
6 and No Cents (\$10,000) each to compensate for the risks, time, and expense of their involvement in the
7 Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in
8 addition to the Claim Amount Plaintiffs would otherwise be due under the Agreement as a Qualified
9 Claimant. Defendants have agreed to not oppose Class Counsel's request for an Enhancement Payment
10 to Plaintiffs so long as it does not exceed the amount stated herein. The Enhancement Payment will be
11 designated as a non-wage payment and reported on an IRS Form 1099. In the event that the Court awards
12 less than the Enhancement Payment amount requested, then any portion of the requested amount not
13 awarded to the Class Representatives shall be added to the Net Settlement Amount to be distributed to
14 Qualified Claimants on a pro rata basis.

15 5.5 PAGA Payment: Ten Thousand Dollars and No Cents (\$10,000) of the Gross Settlement
16 Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA
17 Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees
18 on a pro rata basis as described below in Section 5.5. Any amount not approved by the Court for the
19 allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Qualified
20 Claimants on a pro rata basis.

21 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or
22 PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by
23 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
24 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc. and the Center for Workers' Rights. No portion of
25 the Gross Settlement Amount will revert to Defendants for any reason.

26 5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants
27 and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
28 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not

entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits under any company bonus or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Qualified Claimant Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments to be made by Defendants to the Qualified Claimants and Aggrieved Employees in connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representatives, the Claims Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Qualified Claimants as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved Employees are as follows:

1 5.9.1 Ten percent (10%) of each Qualified Claimants' Claim Amount shall be allocated
2 for payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall
3 receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

4 5.9.2 Ninety percent (90%) of each Qualified Claimants' Claim Amount shall be
5 allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This
6 portion of the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall
7 receive an IRS Form 1099-MISC.

8 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
9 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
10 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the
11 Aggrieved Employees shall receive an IRS Form 1099-MISC.

12 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting
13 and payment of their share of any federal, state and/or municipal income or other taxes on payments made
14 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants' Counsel free and
15 harmless from any claims resulting from treatment of such payments as non-taxable, including the
16 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.
17 No party has made any representation to any of the other Parties as to the taxability of any payments
18 pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved
19 Employees, the payments to Class Counsel, the payments to the Class Representatives, the payroll tax
20 liability of Defendants, or the allocation of the Net Settlement Amount or PAGA Payment to wage and
21 non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this
22 Agreement.

23 5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this
24 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
25 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
26 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount,
27 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and
28 void as described in Section 3 because the Court, in its independent determination, finds that the

Agreement does not meet the standards for settlement approval, then Defendants and Plaintiffs shall be equally responsible for the costs of the Claims Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiffs are adequate representatives for Class Members and Aggrieved Employees.

6. RELEASE

6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's Released Claims against any of the Released Parties.

6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.

6.3 Release by Plaintiffs: Upon the Effective Date, Plaintiffs will be deemed to fully, finally and forever release the Qualified Claimant's Released Claims, Released PAGA Claims, and Class Representatives' Released Claims as to all Released Parties. In addition, Plaintiffs will release Released Parties from any and all complaints, action, claim, right, charge, demand, liability, obligation, promise and/or agreement of any kind or nature that the Plaintiff has now, or might hereafter claim to have against Defendants which can be released as a matter of law. This release includes a Civil Code section 1542 waiver, and Plaintiffs understand and agree that this release is intended to include all claims, if any, which Plaintiff may have against Defendants, including those which he/she does not now know or suspect to

1 exist in his favor. Consequently, Plaintiffs specifically waive California Civil Code Section 1542, which
2 states:

3 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
5 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
6 RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE
7 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
8 DEBTOR OR RELEASED PARTY."

9 Plaintiffs further understand and agree that if they file a charge or complaint with any state or
10 federal government agency, have filed a charge or complaint with any state or federal government
11 agency, or if any state or federal government agency independently pursues any relief on behalf of
12 Plaintiffs, Plaintiffs are, to the extent permissible by law, hereby waiving their right to recover
13 monetary damages or injunctive relief specific to Plaintiffs.

14 7. SETTLEMENT ADMINISTRATION

15 7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1)
16 receiving Class Member and Aggrieved Employee contact information and confirming addresses are
17 valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts,
18 including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members
19 and Aggrieved Employee whose address or contact information as provided to the Claims Administrator
20 is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification
21 to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving,
22 independently reviewing, and resolving any challenges (in consultation with Class Counsel and
23 Defendants' Counsel) from Class Members or Aggrieved Employees, including any associated
24 documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class
25 Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out
26 statements; 7) establishing a toll free telephone line and responding to inquiries and requests for
27 information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
28 determining and paying the final amounts due to be paid under the Agreement after resolution of all
challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA
Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability

1 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late
2 opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual
3 funds from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the
4 statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the
5 number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the
6 number of total undeliverable Notice of Settlements; (e) the number of address traces performed for
7 undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced
8 addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the
9 number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court
10 regarding the final statistics of the administration and compliance with all payment obligations under the
11 Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to
12 Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to
13 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims
14 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which
15 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and
16 obligations contemplated by the Agreement have been fully executed.

17 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will
18 provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the
19 Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the
20 individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement
21 will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net
22 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,
23 proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the
24 class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class
25 Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
26 regarding Class Member's and Aggrieved Employee's estimated Claim Amount.

27 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
28 Preliminary Approval Date, Defendants shall provide the Claims Administrator with the name, last known

mailing address, last known telephone number, Social Security Number, start and end date of employment (if any) of each Class Member, and any other information the Claims Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined herein. The Claims Administrator shall review the data to determine the number of Qualifying Workweeks for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days after receipt of such address information, the Claims Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The Claims Administrator shall maintain all information received from Defendants confidential to itself, and Defendants' Counsel. However, Class Counsel shall be able to review the breakdown of Qualified Workweeks and estimated Claim Amounts for Class Members and Aggrieved Employees prior to mailing for quality assurance provided the personal identifying information is redacted and/or omitted.

7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement is returned to the Claims Administrator as non-delivered on or before the conclusion of the Notice Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within five (5) calendar days. Following each search that does not result in a corrected address, for those Class Members who appear to be current employees of Defendants at the time of the Preliminary Approval Date, the Claims Administrator shall contact Defendants' Counsel for assistance and Defendants shall cooperate in good faith with the Claims Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they are active employees of Defendants. In the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, dispute, or objection shall be the end of the Notice Period or 10 days from the date of the re-mailing, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the Releases contained in Section 6.

1 7.5 Responses to Notice of Settlement:

2 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish
3 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.
4 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that
5 he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants
6 to be excluded from the settlement; (c) identify the case name and number (i.e. Leong -Call, et al. v. MRB
7 Foods Inc., et al., 34-2020-00287486); (d) be signed; and (e) be post-marked no later than the conclusion
8 of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally
9 sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members.
10 The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine
11 whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of
12 the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net Settlement
13 Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or comment
14 thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all
15 terms of the Agreement and any order or final judgment thereon, regardless of whether they otherwise
16 have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this Agreement as
17 it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a
18 Class Member.

19 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes
20 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
21 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and
22 Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
23 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
24 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
25 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify
26 the case name and number (i.e. Leong-Call, et al. v. MRB Foods Inc., et al., 34-2020-00287486) (e) be
27 signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline
28 stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the

1 Court and serve the notice on Class Counsel and Defendants' Counsel, if they intend to appear at the final
2 approval hearing.

3 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
4 Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)
5 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
6 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
7 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two
8 business days) forward all such disputes to Defendants' Counsel and request that Defendants review the
9 dispute. Defendants' records shall presumptively control unless the Class Member can produce
10 documentation evidencing other periods of employment worked. If Defendants do agree with submitted
11 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
12 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
13 Class Member's Claim Amount. If Defendants do not agree with the submitted information, Defendants'
14 Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
15 documentation submitted by the Class Member as part of the dispute. Defendants' Counsel and Class
16 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
17 Counsel being advised of the dispute. Each dispute that Defendants' Counsel and Class Counsel cannot
18 timely resolve shall be resolved by the Claims Administrator or Court.

19 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
20 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator
21 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If
22 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency
23 shall be the end of the Notice Period or 10 days from the date of the deficiency letter, whichever is later.

24 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
25 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
26 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
27 Counsel or Defendants' Counsel to provide notice of the proposed Agreement.
28

1 7.7 Claims Administrator Declaration Regarding Notice Period: Within twenty-one (21) days
2 after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and
3 Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed
4 report regarding the statistics and responses of settlement administration to date and all the Claims
5 Administrators' obligations under Sections 5.8 to 5.9-5.9.3, 7.1 to 7.5.4, and 7.9.

6 7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiffs:
7 Within seven (7) calendar days after the Final Approval Date and the Court's determination of the amount
8 of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiffs, the
9 PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net
10 Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any
11 applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants'
12 Counsel. Defendants shall wire the Gross Settlement Amount and applicable taxes necessary to fund the
13 Settlement as described in Section 5.1 to the Claims Administrator within twenty-one (21) days after the
14 Effective Date to be to be held in trust in a QSF. Within 7 calendar days after funding, the Claims
15 Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement
16 Payment payable to Plaintiffs, the 75% portion of the PAGA Payment payable to the LWDA, Claims
17 Administrator Costs, and payment to Qualified Claimants and/or Aggrieved Employees as required under
18 this Agreement and approved by Court.

19 7.8.1 The Claims Administrator shall wire the Court-approved attorneys' fees and costs
20 to Class Counsel unless other method is requested by Class Counsel. Class Counsel shall provide the
21 Claims Administrator with the pertinent taxpayer identification number and payment instructions after the
22 Final Approval Date.

23 7.8.2 The Claims Administrator shall send a check by mail for the Court-approved
24 Enhancement Payment to the Class Representatives, care of Class Counsel unless other method is
25 requested by Class Counsel.

26 7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim
27 Amount.
28

7.8.4 The Claims Administrator shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this Agreement. Defendants agree to reasonably cooperate with the Claims Administrator to the extent necessary to determine the amount of the payroll tax payment required.

7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred twenty (120) calendar days of issuance. After one hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash their settlement checks, the Claims Administrator shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Claims Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
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1	Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants
2		
3		
4	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
5		
6		
7	Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
8		
9	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 days after the Final Approval Date
10		
11		
12		
13		
14	Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
15		
16	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days of the settlement being funded
17		
18		
19		
20	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
21		
22		
23	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
24		
25	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline
26		
27		
28		

1 **9. DUTIES OF THE PARTIES**

2 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed
3 motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this
4 Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class
5 action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of
6 any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may
7 be requested by the Court relating to, or that are otherwise necessary to the approval and implementation
8 of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement
9 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to
10 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final
11 approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the
12 Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments
13 and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from
14 Class Counsel. With regard to the final approval documents, a similar one-week maximum review and
15 response time shall be observed by the Parties. The Parties will request that the Court's preliminary
16 approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and
17 PAGA Settlement.

18 9.1.1 Plaintiffs' motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
19 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
20 Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily
21 appointing Plaintiffs and Class Counsel as representatives of Class Members; 5) Preliminarily approving
22 settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving
23 the proposed Enhancement Payment to Plaintiffs; 7) Preliminarily approving the application for payment
24 of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
25 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
26 approved as fair, reasonable and adequate as to the Class Members.

27 9.1.2 Defendants shall not oppose Plaintiffs' motion for approval of the proposed
28 Agreement.

9.1.3 The Parties shall cooperate with each other and the Claims Administrator during the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and appropriate to assure effective communication to individual Class Members of information about their rights and obligations under this Agreement.

9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Claim Administrator's mailings including tracing and re-mailing efforts.

9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an Enhancement Payment to the Class Representatives; 3) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Agreement and the Court's orders.

9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist the Claims Administrator as needed or requested in the process of identifying and locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each other and assist the Claims Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Claims Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

9.4 Notice to LWDA: Plaintiffs agrees to provide notice to the Labor and Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

10. MISCELLANEOUS TERMS

10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendants may, at their election, rescind the Agreement and all actions taken in its furtherance will be thereby null and void. Defendants must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Claims Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Claims Administrator Costs shall be paid by Defendants. Defendants have represented that there are no more than 9,194 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 10,113 (*i.e.*, greater than 10% more than 9,194), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 10,113, multiplied by the pay period value. For example, if there were 11,900 workweeks represented to exist during the Class Period, but there are actually 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per workweek, Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 workweeks – 11,900 workweeks = 3,100 workweeks x \$5.00/workweek).

10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT

1 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
2 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
3 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
4 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
5 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
6 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
7 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
8 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
9 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
10 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
11 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
12 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
13 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
14 BY THIS AGREEMENT.

15 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
16 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
17 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
18 and discharged in this Agreement.

19 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
20 signing this Agreement Defendants are waiving any rights to appeal from the Court's approval of the
21 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
22 Plaintiffs are waiving any right or ability to opt out of this Agreement during the Notice Period or
23 otherwise.

24 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
25 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
26 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.
27
28

1 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval Date,
2 judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties
3 to enforce the terms therein.

4 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
5 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
6 execution of such other documents and the taking of such other action as may reasonably be necessary to
7 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
8 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
9 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

10 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
11 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
12 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
13 Complaint, the representative character of the Action, the validity of any of the claims that were or could
14 have been asserted by Plaintiffs and/or Class Members in the Action, or of any liability or guilt of
15 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
16 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiffs, the Class Members,
17 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or
18 wrongdoing toward Plaintiffs, the Class Members, or any other person. Each of the Parties has entered
19 into this Stipulation with the intention to avoid further disputes and litigation.

20 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
21 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
22 the third business day after mailing by United States certified mail, return receipt requested, addressed as
23 follows:

24 To Plaintiffs and the Class:

25 Galen T. Shimoda
26 Justin P. Rodriguez
27 Brittany V. Berzin
28 Shimoda Law Corp.
 9401 East Stockton Blvd., Suite 120
 Elk Grove, CA 95624

To Defendants:

Laura A. Wolfe
McCormick Barstow LLP
7647 North Fresno Street
Fresno, CA 93720
Telephone: (55) 433-2160
Facsimile: (559) 433-2300

10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

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

10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiffs, may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided in this Agreement. The Parties stipulate and agree that the Sacramento County Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

10.13 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

10.14 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this

1 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
2 this Agreement.

3 10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class
4 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
5 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
6 may be executed on behalf of all Class Members by the Class Representatives.

7 10.16 Counterparts: This Agreement shall become effective upon its execution by all of the
8 undersigned. Plaintiffs, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement
9 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
10 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
11 and effect of originals.

12 10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
13 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
14 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
15 with, and governed by, the substantive laws of the State of California without giving effect to that State's
16 choice of law principles.

17 10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted
18 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
19 this Agreement, or any provision thereof.

20 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could
21 be construed as retaliation against any Class Members for participating or seeking to participate in this
22 class action settlement. The Parties will not discourage any class member from participating or seeking
23 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
24 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
25 shall be entitled to further attorneys' fees and costs.

26 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
27 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
28 Each party acknowledges that there is no representation, inducement, promise or agreement which has

1 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
2 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
3 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

4 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
5 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

6 10.22 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
7 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
8 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

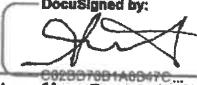
9 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
11 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

12 10.24 Captions: The captions and section numbers in this Agreement are inserted for the reader's
13 convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this
14 Agreement.

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

17 **For Plaintiffs:**

18 Date: 12/15/2021

DocuSigned by:

092007801A0047C...
Analisa Leong-Call

20 Date: _____

Eric Ingalls

21 **For Defendants:**

22 Date: _____

By:
For MRB Foods Inc.

25 Date: _____

Sanjay Lillaney

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 14 Agreement.

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

17 **For Plaintiffs:**

18 Date: _____

19 _____
 20 Analisa Leong-Call

21 Date: 12/16/2021 _____

22 DocuSigned by:

 23 8E42FD2BA19240D...
 24 Eric Ingalls

25 **For Defendants:**

26 Date: _____

27 By:
 28 For MRB Foods Inc.

Date: _____

Sanjay Lillaney

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13 convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this
14 Agreement.

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

17 **For Plaintiffs:**

18 Date: _____

19 _____
20 Analisa Leong-Call

21 Date: _____

22 _____
23 Eric Ingalls

24 **For Defendants:**

25 Date: 12-15-21

26 By: [Signature] Wray President
27 For MRB Foods Inc.

28 Date: 12-15-21

_____ [Signature]
Sanjay Lillune

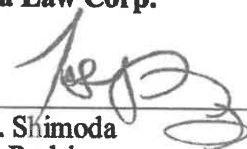
Date: _____

Connie Gammon

APPROVED AS TO FORM

Shimoda Law Corp.

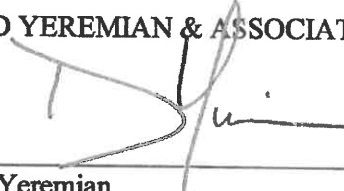
Dated: 12/15/21

By: 
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff Leong-Call

APPROVED AS TO FORM

DAVID YEREMIAN & ASSOCIATES, INC.

Dated: 12/17/21

By: 
David Yeremian
Alvin B. Lindsay
Attorney for Plaintiff Ingalls

APPROVED AS TO FORM

UNITED EMPLOYEES LAW GROUP, PC

Dated: 12/20/21

By: 
Walter Haines
Attorney for Plaintiff Ingalls

APPROVED AS TO FORM

MCCORMICK BARSTOW LLP

Dated: _____

By: _____
Laura A. Wolfe
Attorney for Defendants

1
2 Date: 12/14/21
3
4

C Gammon
Connie Gammon

5 APPROVED AS TO FORM

Shimoda Law Corp.

6
7 Dated: _____
8

By: _____

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff Leong-Call

9 APPROVED AS TO FORM

DAVID YEREMIAN & ASSOCIATES, INC.

10
11 Dated: _____
12

By: _____

David Yeremian
Alvin B. Lindsay
Attorney for Plaintiff Ingalls

13
14
15 APPROVED AS TO FORM

UNITED EMPLOYEES LAW GROUP, PC

16
17 Dated: _____
18

By: _____

Walter Haines
Attorney for Plaintiff Ingalls

19 APPROVED AS TO FORM

MCCORMICK BARSTOW LLP

20
21
22 Dated: 12/15/2021
23

By: _____

LAW
Laura A. Wolfe
Attorney for Defendants

EXHIBIT 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

ANALISA LEONG-CALL and ERIC INGALLS,
individually and on behalf of all other similarly
situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
SANJAY LILLANEY, an individual; CONNIE
GAMMON, an individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2020-00287486

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: Current and former non-exempt employees of Defendants in California from October 5, 2019 to _____ (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on _____, you are receiving notice of a proposed class action settlement between Plaintiffs Analisa Leong-Call and Eric Ingalls ("Plaintiffs" or "Class Representatives") and Defendants MRB Foods Inc., Sanjay Lillaney and Connie Gammon ("Defendants") on behalf of Class Members as defined above. You are receiving this notice because Defendants' records indicate you fall within the definition of "Class Member." Defendants' records also indicate that you worked _____ workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be _____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

Plaintiffs Analisa Leong-Call and Eric Ingalls, former employees, filed a Complaint against Defendants in the California Superior Court for the County of Sacramento on behalf of themselves and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2020-00287486. The Class Period is October 5, 2019 to _____ (the "Class Period").

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves and Class Members. Plaintiffs alleged that Defendants violated California law by 1) failing to incorporate the value of nondiscretionary bonuses into putative class members' regular rates of pay for the purpose of calculating overtime wages and paid sick time; 2) failing to pay putative class members for all hours worked, including overtime hours (requiring off the clock work pre and post shift and requiring clock outs for meal periods not taken); 3) contacting putative class members on their personal cellphones during shifts and failing to reimburse for cellphone use; 4) requiring putative class members to use their personal vehicles to drive to other restaurants and make bank deposits and failing to reimburse mileage; 5) failing to authorize and permit all meal and rest periods (missed

lunches, late lunches, and no second lunch for shifts over 10 hours); and 6) failing to pay accrued but unused vacation wages upon separation. Defendants have denied all of Plaintiffs' allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants agrees to pay a total sum of Two Hundred Thousand Dollars and No Cents (\$200,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$70,000, attorneys' costs not to exceed \$22,000, Claims Administrator Costs estimated not to exceed \$15,000, Class Representatives' Enhancement Payment of \$10,000 each, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as current and former non-exempt employees of Defendants in California from October 5, 2019 to _____.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 90% for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 10% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendants' records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than _____. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims contained in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period.

Aggrieved Employees will be deemed to have released all Private Attorneys General Act claims for civil penalties contained in Plaintiffs' letters to the LWDA and/or operative Complaint during the PAGA Claim Period.

The individuals released ("Released Parties") means Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, insurers, and anyone acting on their behalf.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendants have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$70,000, and attorneys' costs not to exceed \$18,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representatives and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or want to be excluded from this settlement; (c) identify the case

name and number (i.e. *Leong-Call, et al. v. MRB Foods Inc., et al.*, 34-2020-00287486); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than _____. If you submit a request to opt out which is not postmarked by _____, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. *Leong-Call, et al. v. MRB Foods Inc., et al.*, 34-2020-00287486) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiffs and Defendants at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiffs and Defendants. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendants and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 54, 813 6th Street Sacramento, CA on _____ at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

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VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendants' Counsel as follows:

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

Laura A. Wolfe
McCormick Barstow LLP
7647 North Fresno Street
Fresno, CA 93720
Telephone: (55) 433-2160
Facsimile: (559) 433-2300
On behalf of Defendants

David Yeremian
Alvin B. Lindsay
DAVID YEREMIAN AND ASSOCIATES, INC.
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
On behalf of Plaintiff Eric Ingalls

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

Galen T. Shimoda (Cal. State Bar No. 226752)
 Justin P. Rodriguez (Cal. State Bar No. 278275)
 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
 9401 East Stockton Blvd., Suite 120
 Elk Grove, CA 95624
 Telephone: (916) 525-0716
 Facsimile: (916) 760-3733

Attorneys for Plaintiff ANALISA LEONG-CALL on behalf
 of herself and similarly situated employees

Caption continued on next page

FILED
Superior Court Of California
Sacramento
11/08/2021
neanmgual
 By _____, Deputy
 Case Number:
34-2020-00287486

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

ANALISA LEONG-CALL and ERIC
 INGALLS, individually and on behalf of
 all others similarly situated,

Plaintiffs,

vs.

MRB FOODS INC., a California
 Corporation;
 SANJAY LILLANEY, an individual;
 CONNIE GAMMON, an individual;
 and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00287486

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
 DAMAGES:**

1. Failure to Pay Overtime Wages
2. Wage Statement Violations
3. Waiting Time Penalties
4. Unfair Competition
5. Failure to Reimburse Expenses
6. Failure to Pay Accrued Vacation
7. Meal Period Violations
8. Rest Period Violations
9. Private Attorneys General Act
10. Failure to Pay Minimum Wages
11. Violation of Labor Code § 204

JURY TRIAL DEMANDED

1 **DAVID YEREMIAN & ASSOCIATES, INC.**

2 **David Yeremian (SBN 226337)**

3 **Alvin B. Lindsay (SBN 220236)**

4 **535 N. Brand Blvd., Suite 705**

5 **Glendale, California 91203**

6 **Telephone: (818) 230-8380**

7 **Facsimile: (818) 230-0308**

8 **UNITED EMPLOYEES LAW GROUP, PC**

9 **Walter Haines (SBN 71075)**

10 **5500 Bolsa Ave., Suite 201**

11 **Huntington Beach, CA 92649**

12 **Telephone: (562) 256-1047**

13 **Facsimile: (562) 256-1006**

14 **Attorneys for Plaintiff ERIC INGALLS on behalf**
15 **of himself and similarly situated employees**

Plaintiffs ANALISA LEONG-CALL and ERIC INGALLS ("Plaintiffs") hereby file this Complaint against Defendants MRB FOODS, INC., a California Corporation; SANJAY LILLANEY, an individual; CONNIE GAMMON, an individual; and DOES 1 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

INTRODUCTION

1. This is a class action and Private Attorneys General Act action brought by Plaintiffs on behalf of themselves and similarly situated employees seeking unpaid minimum wages, overtime wages, unpaid meal and rest period premiums, unpaid sick leave, reimbursement expenses, unpaid accrued vacation, and civil and statutory penalties for violations of California Labor Code.

PARTIES

2. Plaintiff ANALISA LEONG-CALL is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a resident of the State of California.

3. Plaintiff ERIC INGALLS is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a resident of the State of California.

4. Plaintiffs are informed and believe and thereupon alleges that MRB FOODS INC. is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

5. On information and belief, Plaintiffs allege, that SANJAY LILLANEY is an individual over the age of eighteen (18) and is a resident of the State of Nevada. Plaintiffs further allege that SANJAY LILLANEY is an owner, director, officer, and/or managing agent of MRB FOODS, INC. responsible for causing the violations outlined in the First through Third and Fifth through Eleventh causes of action. As such SANJAY LILLANEY is individually liable pursuant to California Labor Code section 558.1.

6. On information and belief, Plaintiffs allege, that CONNIE GAMMON is an individual over the age of eighteen (18) and is a resident of the State of Nevada. Plaintiffs further allege that CONNIE GAMMON is an owner, director, officer, and/or managing agent of MRB FOODS, INC.

1 responsible for causing the violations outlined in the First through Third and Fifth through Eleventh
2 causes of action. As such CONNIE GAMMON is individually liable pursuant to California Labor Code
3 section 558.1.

4 7. Defendants DOES 1 through 100 are persons or entities whose true names and identities
5 are presently unknown to Plaintiffs, and who therefore are sued by such fictitious names. Plaintiffs are
6 informed and believe and on that basis allege that each of the fictitiously named Defendants are
7 responsible in some manner for the matters alleged herein, and are jointly and severally liable to
8 Plaintiffs. Plaintiffs will seek leave of court to amend this complaint to state the true names and
9 capacities of such fictitiously named Defendants when ascertained.

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

13 9. Defendants, and each of them, are now and or at all times mentioned in this Complaint
14 were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting
15 within the course and scope of, and in pursuance of said joint venture, partnership and common
16 enterprise. Defendants are also "joint employers" as they controlled the terms and conditions of
17 Plaintiffs' employment.

18 10. Defendants, and each of them, are now and or at all times mentioned in this Complaint
19 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

20 11. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
21 wrongs, complaints, injuries and/or damages alleged in this Complaint.

22 JURISDICTION AND VENUE

23 12. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
24 violations of the California Business and Professions Code, the California Labor Code, Wage Orders,
25 and common law.

26 13. Venue is proper pursuant to Civil Procedure Code sections 395(a) and 395.5, in that the
27 wrongful acts and violations of law asserted herein occurred within Sacramento County.
28

14. Plaintiffs sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of themselves and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff Leong-Call gave written notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on approximately October 5, 2020. Plaintiff Ingalls gave written notice via online submission to the LWDA on November 19, 2020. Plaintiffs provided facts and legal bases for their claims within the notices to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiffs each submitted the \$75.00 filing fee. The October 5, 2020 and November 19, 2020 notices were also sent via certified mail to Defendants on the same day. Plaintiffs are informed and believe, that to date, the LWDA has not provided any response to Plaintiffs’ notice correspondences. Accordingly, Plaintiffs are informed and believe that they have exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring this action on behalf of themselves and all similarly situated employees. *See* Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

CLASS ALLEGATIONS

15. Plaintiffs bring the First through Eleventh Causes of Action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure § 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

All current and former non-exempt employees of Defendants in California from October 5, 2019 to the present.

16. This action may be maintained as a class action because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

17. **Numerosity:** The Plaintiff Class is so numerous that the individual joinder of all members is impracticable. While the actual number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that more than approximately fifty (50) individuals were subjected to the practices outlined in this Complaint relating to the First through Eleventh Causes of Action.

11.

11

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

- 4 (1) Whether Defendants had a policy and/or practice in place to calculate regular rates of
5 pay taking into account all non-discretionary remuneration;
- 6 (2) Whether Defendants had a policy and/or practice in place to calculate Plaintiffs' and
7 putative class members' premium rates of pay taking into account all non-
8 discretionary remuneration;
- 9 (3) Whether as a result of Defendants' payroll policies, or lack thereof, they failed to pay
10 all overtime wages owed;
- 11 (4) Whether Defendants had a policy and/or practice of failing to compensate Plaintiffs
12 and putative class members for all hours worked;
- 13 (5) Whether as a result of Defendants' payroll policies, or lack thereof, they failed to pay
14 all meal and rest period premiums owed;
- 15 (6) Whether Defendants had a policy and/or practice of failing to authorize and permit all
16 meal and rest periods;
- 17 (7) Whether as a result of Defendants' payroll policies, or lack thereof, Defendants'
18 employees were given paystubs that did not reflect total hours worked by the
19 employee as required by Labor Code 226;
- 20 (8) Whether as a result of Defendants' payroll policies, or lack thereof, Defendants'
21 employees were given paystubs that did not reflect all applicable hourly rates in effect
22 as required by Labor Code 226;
- 23 (9) Whether Defendants had a policy and/or practice in place to reimburse expenses;
- 24 (10) Whether Defendants had a policy and/or practice in place to pay Plaintiffs and
25 putative class members accrued and unused vacation at the time of their separation or
26 termination;
- 27
28

1 (11) Whether Defendants had a policy and/or practice of failing to pay all wages owed to
2 Plaintiffs and putative class members twice monthly in accordance with the
3 requirements of Labor Code § 204; and

4 (12) Whether as a result of Defendants' payroll policies, or a lack thereof, Plaintiffs and
5 putative class members received all wages, due and owing, at the time of their
6 termination/separation.

7 19. Typicality: Plaintiffs' claims are typical of the claims for the members of the Plaintiff
8 Class. Plaintiffs and similarly situated employees were hourly employees who actually were not
9 compensated for all hours worked or premium wages owed to them based on Defendants'
10 miscalculation of the regular rate of pay and requirement that employees perform off the clock work.
11 Similarly, Defendants did not pay Plaintiff and similarly situated employees all wages they were
12 owed. Plaintiffs and similarly situated employees did not receive all meal and rest period owed to
13 them or all missed meal and rest period premiums they were owed twice monthly in accordance with
14 the requirements of Labor Code § 204. Plaintiffs and similarly situated employees were also not
15 reimbursed for the use of their personal vehicles or cellphones. Plaintiffs and similarly situated
16 employees were not paid all accrued and unused vacation at their separation or termination.
17 Additionally, as a result of Defendants' inaccurate calculations and compensation, Plaintiffs and
18 similarly situated employees were not provided legally compliant paystubs and did not receive all
19 wages due to them upon their separation or termination.

20 20. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of
21 the Plaintiff Class. Plaintiffs have no interests which are adverse to those of absent class members.
22 Additionally, Plaintiffs have retained counsel who has substantial experience in complex civil
23 litigation and employment law matters.

24 21. Superiority: A class action is superior to other available means for the fair and
25 efficient adjudication of the controversy as there is no plain, speedy, or adequate remedy other than
26 by maintenance of this class action. The critical issues in the First through Eleventh Causes of
27 Action revolve around the legal requirement to pay employees for minimum wages, overtime,
28 missed meal and rest period premiums, accrued vacation and paid sick time, and necessary expenses.

1 All other issues in the First through Eleventh Causes of Action in this case, *e.g.*, wage statement
2 violations, untimely payment of wages, waiting time penalties, and unfair competition derive from
3 these requirements. Failure to maintain this suit as a class action would result in multiple suits
4 involving the same legal analysis and factual scenarios. Furthermore, the damages suffered by each
5 individual member of the class may be relatively small, the expenses and burden of individual
6 litigation relatively high, and such costs may make it difficult or impossible for individual members
7 of the class to redress the wrongs done to them.

8 22. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
9 management of this action that would preclude its maintenance as a class action.

10 **FACTUAL ALLEGATIONS**

11 23. Plaintiffs incorporates by reference and re-alleges paragraphs 1 through 22 as though
12 fully set forth herein.

13 24. Plaintiff Leong-Call worked for Defendants as an hourly, non-exempt employee from
14 about September 2014 to July 2020. Plaintiff Leong-Call's job title was general manager. Plaintiff
15 Ingalls worked for Defendants as an hourly, non-exempt employee. Plaintiff Ingalls' job title was crew
16 member. Defendants own and operate fast food restaurants, such as Burger King. Plaintiffs and
17 similarly situated employees regularly worked five (5) to seven (7) days per week working shifts over
18 eight (8) hours in a day and/or forty (40) hours in a week. Plaintiff Leong-Call and similarly situated
19 employees frequently received non-discretionary remuneration, including bonuses and other types of
20 incentive based pay, that were based on the store's profitability, speed of service, inventory, labor, guest
21 comments, and other measures, as part of their pay in addition to their basic hourly rates. Similarly
22 situated employees also earned overtime, meal and rest period premiums, and sick leave wages during
23 the same periods of time covered by the bonuses and incentive-based pay. However, Defendants did not
24 properly incorporate the value of the non-discretionary remuneration such as monthly bonuses and
25 incentive pay, etc., into Plaintiff Leong-Call's and similarly situated employees' regular rates of pay for
26 the purpose of paying overtime wages, meal and rest period premiums, and/or paid sick time. This
27 caused Plaintiff Leong-Call and similarly situated employees to be deprived of all wages due and owing
28

1 as they were not paid the additional amounts that would have resulted by incorporating the value of the
2 non-discretionary remuneration into their regular rate of pay.

3 25. Plaintiffs and similarly situated employees regularly were unable to take meal periods or
4 were not able to begin their meal periods until after their fifth hour of work due to how busy the
5 restaurants were and understaffing. Upper management would also regularly contact putative class
6 members during shifts (often on their personal cellphones) and require them to clock out for meal
7 periods, whether they were able to take a meal period at that time or not. Plaintiffs estimate putative
8 class members were forced to clock out for meal periods approximately three to five times each week.
9 Additionally, when putative class members worked shifts longer than ten (10) hours they did not get a
10 second meal period.

11 26. Similarly, putative class members did not receive all rest periods they were entitled to
12 due to how busy the restaurant was and understaffing. Defendants did not schedule any rest periods for
13 employees. Defendants also did not provide a third rest period when putative class members worked
14 shifts longer than ten (10) hours. To the extent Plaintiffs and similarly situated employees were able to
15 take breaks, they were often less than ten (10) minutes. When Plaintiff Ingalls raised the issue of
16 missing lunches and breaks with his manager he was told, "sometimes you get a lunch, sometimes you
17 don't, its Burger King dude."

18 27. Plaintiffs and similarly situated employees were required by Defendants to work
19 substantial hours off work off the clock without compensation pre shift, during their shifts (clocking out
20 for meal periods not taken), and post shift. Plaintiffs and similarly situated employees were required to
21 work however many hours it took to complete the required work in response to customer demands;
22 however, they were instructed not to record hours worked outside of their scheduled hours. For
23 example, Plaintiff Ingalls was instructed by his manager that if his tasks were not finished by the end of
24 his shift that he was to clock out but keep working to finish them. Plaintiffs estimate off the clock work
25 occurred an average of two (2) times per week and ranged from about fifteen (15) minutes up to two (2)
26 or three (3) hours. In most instances, Plaintiffs and similarly situated employees endured off the clock
27 work at a point in time past eight (8) hours into a work shift, thus these off the clock hours should have
28 been paid at overtime rates.

1 28. Plaintiffs and similarly situated employees would regularly make bank deposits for
2 Defendants using their personal vehicles to drive from the restaurant location to the bank. Plaintiffs and
3 similarly situated employees would also travel using their personal vehicles to other restaurant locations
4 during the day to pick up or drop of checks or inventory or to fill in when needed (sometimes for just a
5 few hours before returning to the restaurant they started at in the morning). Defendants did not
6 reimburse Plaintiffs and similarly situated employees for the use of their personal vehicles.

7 29. Plaintiffs and similarly situated employees regularly received calls from upper
8 management on their personal cellphones during their shift. These calls were usually about clocking out
9 for meal periods or scheduling. Defendants did not reimburse Plaintiffs and similarly situated
10 employees for the use of their personal cellphones for work.

11 30. Plaintiff Leong-Call and other general managers accrued one (1) week of vacation by the
12 time they reached one (1) year of employment and two (2) weeks of vacation upon reaching a third year
13 of employment. However, upon Plaintiff Leong-Call's and similarly situated employees' termination or
14 separation Defendants failed to pay accrued but unused vacation hours.

15 31. Defendants failed to provide Plaintiffs and similarly situated employees with legally
16 compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, all
17 applicable rates in effect during the pay period and the corresponding number of hours worked at each
18 hourly rate, and the accurate amount of gross and net wages earned. As a result, Plaintiffs and similarly
19 situated employees were not able to determine the total wages owed to them from their paystubs alone.

20 32. As a result of Defendants' policies, at the time of their termination or separation,
21 Plaintiffs and similarly situated employees had minimum wages, overtime wages, meal and rest period
22 premiums, paid sick time and vacation wages still owing to them. To date, Defendants still have not
23 paid these wages to Plaintiffs and similarly situated employees.

24 33. Sanjay Lillaney and Connie Gammon are and/or were owners, officers, directors, and
25 shareholders of MRB Foods Inc. during the claim period. They developed, maintained, implemented,
26 and caused the unlawful wage and hour practices described herein to occur.

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28 //

1 40. According to Labor Code section 226(a), an employer must provide an itemized
2 statement to an employee, semi-monthly or at the time of each payment of wages, showing:

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

15 41. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an
16 accurate and complete itemized statement showing the requirements set forth in Labor Code section
17 226(a). Defendants did not accurately itemize total hours worked, all applicable hourly rates, sick leave
18 pay rates or the corresponding number of hours worked at each hourly rate. As a result, Plaintiffs and
19 similarly situated employees were unable to determine the amount of unpaid wages owed to them.

20 42. As a proximate cause of Defendants' acts, Plaintiffs and similarly situated employees
21 were damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the
22 extent pertinent as if set forth here in full.

23 **THIRD CAUSE OF ACTION**
24 **WAITING TIME PENALTIES**
25 **(As to all Defendants)**

26 43. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 42 as though fully
27 set forth herein.

28 44. An employer must pay an employee who is terminated all unpaid wages immediately
upon termination. Labor Code § 201.

45. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of resignation. Labor Code § 202.

46. Plaintiffs and similarly situated employees did not receive all wages, premiums wages, used sick pay, and vacation wages owed to them at their separation or termination.

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

48. Defendants knew of their obligation to pay Plaintiffs and similarly situated individuals for premium wages and sick leave pay because their time and pay records showed that these wages were being earned but were not being compensated correctly due to the failure to correctly calculate the regular rate of pay. Additionally, Defendants were aware that Plaintiffs and similarly situated employees were being required to work off the clock and had accrued and unused vacation. Thus, Defendants' failure to pay all wages at the time of separation or termination was in complete disregard of their obligations. Such conduct shows Defendants' knowledge of its obligation to pay all wages owed upon termination and willful refusal.

49. As a proximate result of Defendants' conduct, Plaintiffs have been damaged and deprived of her wages and thereby seek her and putative class members' waiting time penalties due at their daily rate of pay multiplied by up to thirty (30) days.

FOURTH CAUSE OF ACTION
UNFAIR COMPETITION

(As to all Defendants MRB Foods, Inc. and DOES 1 to 100)

50. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 49 as though fully set forth herein.

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

52. Plaintiffs are informed and believe and thereon allege that Defendants did not pay Plaintiffs and similarly situated employees all minimum wages, premium wages owed, accrued and unused vacation, and paid sick leave in violation of the California Labor Code.

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

54. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code § 17203), Plaintiffs and similarly situated employees are entitled to restitution as a result of Defendants' unfair business practices, including, but not limited to, interest and penalties pursuant to B&P §§ 17203, 17208, for the violations of Labor Code and applicable Wage Orders in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
FAILURE TO PAY REIMBURSEMENT EXPENSES
(As to all Defendants)

55. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 54 as though fully set forth herein.

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

57. Defendants required Plaintiffs and similarly situated employees to use their personal vehicles and personal cellphones for work purposes. Defendants did not reimburse Plaintiff and similarly situated employees for these expenses.

58. Defendants' conduct described herein violated California Labor Code section 2802. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below titled "DAMAGES."

11

11

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 227.3
(As to all Defendants)

59. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 58 as though fully set forth herein.

60. Labor Code section 227.3 provides that "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served."

61. At the time of termination, Defendants failed to pay Plaintiff Leong-Call and similarly situated employees their accrued vacation.

62. As a proximate cause of Defendants' conduct, Plaintiff Leong-Call and similarly situated employees were damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS OR PAYMENT IN LIEU THEREOF
(As to all Defendants)

63. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 62 as though fully set forth herein.

64. An employer must provide an employee meal and rest periods in accordance with the applicable Wage Order, and Labor Code sections 226.7 and 512.

65. Labor Code section 226.7, 512 and Wage Order 5, section 11(A) require an employer to provide a duty-free meal period of not less than 30 minutes for each work period of more than five (5) hours. If an employee works longer than 10 hours in a workday, the employer must provide a second meal period.

66. An employer must pay an employee an additional one hour of pay at their regular rate of pay if the employee is not provided the legally required meal period.

67. Plaintiffs allege that Defendants did not authorize and permit Plaintiffs and similarly situated employees to take all meal periods they were entitled to. Additionally, Defendants did not pay Plaintiffs and similarly situated employees all meal period premiums due to them. To the extent any

1 meal period premiums were paid, they did not incorporate the value of bonus and incentive payments for
2 determining the employee's regular rate. Thus, amounts remain owed to Plaintiffs and similarly situated
3 employees for earned meal period premiums.

4 68. As a proximate cause of Defendants' actions, Plaintiffs and similarly situated employees
5 are entitled to the full value of the meal period premiums that have not yet been paid. Labor Code
6 §226.7 and Wage Order 5-2001, §§11(B) and 12(B).

7 **EIGHTH CAUSE OF ACTION**
8 **FAILURE TO PROVIDE REST PERIODS OR PAYMENT IN LIEU THEREOF**
9 **(As to all Defendants)**

10 69. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 68 as though fully
11 set forth herein.

12 70. An employer must provide an employee rest periods in accordance with the applicable
13 Wage Order and Labor Code section 226.7.

14 71. Wage Order 5-2001, section 12(A) requires every employer to authorize and permit
15 employees to take rest periods. For each four (4) hours or fraction thereof worked by the employee, the
16 employee shall receive ten (10) minutes net rest time. See Wage Order 5-2001 § 12(A).

17 72. Plaintiffs allege that Defendants did not authorize and permit Plaintiffs and similarly
18 situated employees to take all rest periods owed to them. Defendants did not pay Plaintiffs and similarly
19 situated employees all rest period premiums due to them. To the extent any rest period premiums were
20 paid, they did not incorporate the value of bonus and incentive payments for determining the employee's
21 regular rate. Thus, amounts remain owed to Plaintiffs and similarly situated employees for earned rest
22 period premiums.

23 73. As a proximate cause of Defendants' failure to "authorize and permit" rest periods,
24 Plaintiffs and similarly situated employees are entitled to one (1) hour of pay at the employees' regular
25 rate of compensation for each rest period not provided, as a wage, from three (3) years of the filing of
26 this Complaint. See Cal. Lab. Code § 226.7; IWC Wage Order 5-2001 § 12(B)

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

1 74. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 73 as though fully
2 set forth herein.

3 75. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the
4 following provisions of the Labor Code in their dealings with him and other similarly situated current
5 and former employees:

- 6 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay
7 Overtime Wages)
- 8 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 9 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
10 Statements)
- 11 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 12 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
13 Work in Any Industrial Welfare Commission Order)
- 14 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- 15 • Violation of Labor Code § 227.3 (Failure to Pay Accrued and Unused Vacation)
- 16 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order 5, §§ 11(A) and 11(B)
17 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 18 • Violation of Labor Code § 226.7; IWC Wage Order 5, § 12(A) (Failure to Provide
19 Rest Periods or Pay Premiums in Lieu Thereof)
- 20 • Violation of Labor Code §§ 1194, 1197 (Failure to Pay Minimum Wages)
- 21 • Violation of Labor Code § 204 (Untimely Payment of Wages)
- 22 • Violation of Labor Code §§ 1174, 1198.5 (Failure to Keep Accurate Records)
- 23 • Violation of Labor Code § 221 (Unlawfully Collecting or Receiving Wages)

24 76. Plaintiffs seek civil penalties against Defendants as provided in the Labor Code, or, if no
25 civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

26 77. Plaintiffs seek these civil penalties from Defendants pursuant to Labor Code sections
27 2699(a) and 2699.3.

28 //

TENTH CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

78. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 77 as though fully set forth herein.

79. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiffs and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code § 1194. Defendants failed to pay Plaintiffs and similarly situated employees for all time they spent working for Defendants.

80. Plaintiffs were not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

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

ELEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(As to all Defendants)

82. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 81 as though fully set forth herein.

83. Labor Code section 204 instructs that: "All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." As described above, Defendants failed to pay Plaintiffs and similarly situated employees all wages owed to them, including minimum wages, overtime wages, meal and rest premiums, and paid sick time at the time they were due, twice during each calendar month.

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

//

DAMAGES

WHEREFORE, Plaintiffs request relief as follows:

1. A Jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount proven at trial;
 - b. Interest for the wages due pursuant to Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Penalties as provided for in Labor Code section 226;
 - b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);
4. As to the Fifth Cause of Action:
 - a. All reimbursement expenses earned and owing in an amount to be proven at trial;
 - b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
5. As to the Sixth Cause of Action:
 - a. For all unpaid vacation wages due and owing;
 - b. For attorneys' fees, costs, and interest pursuant to Labor Code §§ 218.5 and 218.6;
6. As to the Seventh and Eighth Causes of Action:
 - a. For wages in an amount proven at trial;
 - b. For attorney's fees and costs and interest pursuant to California Code of Civil Procedure sections 1021.5 and Civil Code 3287.
7. As to the Ninth Cause of Action:
 - a. For civil penalties as provided for in the Labor Code for each enumerated violation;

- 1 b. For those Labor Code sections, the violation of which there is no civil
2 penalty provided, the default penalty provided in Labor Code section
3 2699(f): for any initial violation, one hundred dollars (\$100) for each
4 aggrieved employee per pay period; For any subsequent violation, two
5 hundred dollars (\$200) for each aggrieved employee per pay period;
6 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
7 d. For any other remedies as allowed by law and/or deemed appropriate by
8 the Court;

9 8. As to the Tenth Cause of Action:

- 10 a. For wages in an amount proven at trial;
11 b. Interest for the wages due pursuant to California Labor Code section
12 1194;
13 c. For reasonable attorney's fees and costs incurred pursuant to California
14 Labor Code section 1194;
15 d. Liquidated damages pursuant to California Labor Code section 1194.2;

16 9. As to the Eleventh Cause of Action:

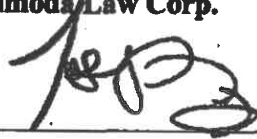
- 17 a. For wages in an amount proven at trial;
18 b. Interest for the wages due pursuant to California Labor Code section
19 1194;
20 c. For reasonable attorney's fees and costs incurred pursuant to California
21 Labor Code sections 1194 and 218.5;

22 10. As to All Causes of Action:

- 23 a. For other such relief as this Court may deem just and proper;
24 b. Attorney's fees as provided by law; and
25 c. Interest as provided by law.

1 Dated: November 5, 2021

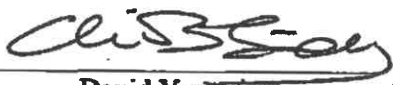
Shimoda Law Corp.

2
3 By: 

4 Galen T. Shimoda
5 Justin P. Rodriguez
6 Brittany V. Berzin
7 Attorneys for Plaintiff Leong-Call

8 DAVID YEREMIAN AND ASSOCIATES, INC.

9
10 Dated: November 5, 2021

11 By: 

12 David Yeremian
13 Alvin B. Lindsay
14 Attorneys for Plaintiff Ingalls

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

5 I, Caitlyn A. Lopez, declare that:

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

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

- 9 • Second Amended Complaint for Damages

10 Laura A. Wolfe (SBN: 266751)
11 McCormick Barstow LLP
12 7647 North Fresno Street
13 Fresno, CA 93720
14 Telephone: (559) 433-2160
15 Facsimile: (559) 433-2300
16 Email: Laura.Wolfe@mccormickbarstow.com

17 Alvin Lindsay (SBN: 220236)
18 David Yermian (SBN: 226337)
19 David Yermian & Associates, Inc.
20 535 N. Brand Blvd., Ste. 705
21 Glendale, CA 91203-1989
22 Telephone: (818) 230-8380
23 Facsimile: (818) 230-0308
24 Email: alvin@yermianlaw.com
25 david@yermianlaw.com

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

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

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

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

29 I declare under penalty of perjury under the laws of the State of California that the foregoing
30 is true and correct, and that this declaration was executed on November 8, 2021, at Elk Grove,
31 California

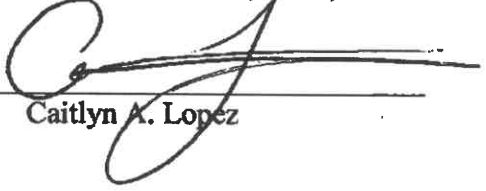
32 
33 Caitlyn A. Lopez

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

October 5, 2020

For Online Filing:

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

Re: *Leong-Call v. MRB Foods Inc., et al.*

Dear Labor Commissioner,

As counsel for Analisa Leong-Call ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

MRB Foods Inc.
4865 Joule Street, Suite C5
Reno, NV 89502

Sanjay Lillaney
4865 Joule Street, Suite C5
Reno, NV 89502

Connie Gammon
4865 Joule Street, Suite C5
Reno, NV 89502

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against MRB Foods Inc., Sanjay Lillaney, and Connie Gammon ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: 1) all current and former non-exempt employees of Defendants who performed work in California and were paid any bonuses or other incentive based compensation in addition to their basic hourly rates; and 2) all current and former non-exempt employees of Defendants who performed work in California and who were issued paystubs. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).



A. FACTS

Plaintiff worked for Defendants as a non-exempt employee. Defendants own and operate fast food restaurants, such as Burger King. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week. Plaintiff and Aggrieved Employees frequently received non-discretionary remuneration, including bonuses and other types of incentive based pay that were based on the store's profitability, speed of service, guest comments, and other measures, as part of their pay in addition to their basic hourly rates. Aggrieved Employees also earned overtime, meal and rest period premiums, and sick leave wages during the same periods of time covered by the bonuses and incentive-based pay. However, Defendants did not properly incorporate the value of the non-discretionary remuneration such as bonuses and incentive pay, etc., into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages, meal and rest period premiums, and/or paid sick time. This caused Plaintiff and Aggrieved Employees to be deprived of all wages due and owing as they but were not paid the additional amounts that would have resulted by incorporating the value of the non-discretionary remuneration into their regular rate of pay.

Plaintiff and Aggrieved Employees would regularly make bank deposits for Defendants using their personal vehicles to drive from the store location to the bank. Defendants did not have any policy to reimburse Plaintiff and Aggrieved Employees for the use of their personal vehicles. Plaintiff and Aggrieved Employees did not receive any reimbursement for the use of their personal vehicles.

Defendants failed to provide Plaintiff and Aggrieved Employees with legally compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, all applicable rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and the accurate amount of gross and net wages earned. As a result, Plaintiff and Aggrieved Employees were not able to determine the total wages owed to them from their paystubs alone.

As a result of Defendants' policies, at the time of their termination or separation, Plaintiff and Aggrieved Employees had overtime wages, meal and rest period premiums, and/or paid sick time still owing to them. Additionally, Defendants had a policy and practice of failing to pay Plaintiff and Aggrieved Employees all accrued vacation at the time of their termination or separation. As of the date of this letter, Defendants still have not paid these wages to Plaintiff and Aggrieved Employees.

Sanjay Lillaney and Connie Gammon are and/or were owners, officers, directors, and shareholders of MRB Foods Inc. during the claim period. They developed, maintained, implemented, and caused the unlawful wage and hour practices described herein to occur.



B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)

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

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

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

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

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

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



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

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

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

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

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



leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

Count Seven – Violation of Labor Code § 227.3 (Failure to Pay Accrued and Unused Vacation)

Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate. *See* Labor Code § 227.3. Defendants had a policy that provided Plaintiff and Aggrieved Employees with paid vacations, however upon Plaintiff's and Aggrieved Employees' termination or separation failed to pay Plaintiff and Aggrieved Employees the unused vacation time they had accrued. This was against the law.

Count Eight - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. An employer who violates these provisions must pay an employee one (1) hour of premium pay at the employee's regular rate as compensation for the violation. For the reasons stated above, Plaintiff and Aggrieved Employees were not paid all meal premiums due to them because any meal period premiums that were paid did not incorporate the value of bonus and incentive payments for determining the employee's regular rate. This was in violation of the law.

Count Nine – Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. An employer who violates these provisions must pay an employee one (1) hour of premium pay at the employee's regular rate as compensation for the violation. For the reasons stated above, Plaintiff and Aggrieved Employees were not paid all rest premiums due to them because any rest period premiums that were paid did not incorporate the value of bonus



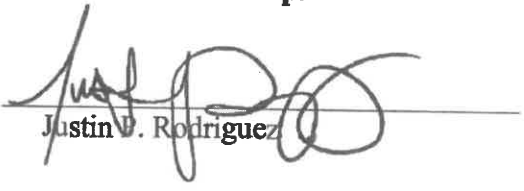
and incentive payments for determining the employee's regular rate. This was in violation of the law.

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

Very truly yours,

Shimoda Law Corp.

By:


Justin V. Rodriguez

JPR:bb

cc: Client via e-mail

1 *Leong-Call v. MRB Foods Inc., et al.*

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

4 I, Caitlyn A. Lopez, declare that:

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

7 On October 5, 2020, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

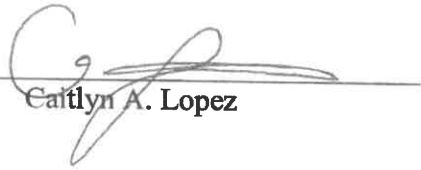
9 MRB Foods Inc. 10 4865 Joule Street, Suite C5 11 Reno, NV 89502	Sanjay Lillaney 4865 Joule Street, Suite C5 Reno, NV 89502
12 Connie Gammon 13 4865 Joule Street, Suite C5 14 Reno, NV 89502	

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

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

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

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct, and that this declaration was executed on October 5, 2020, at Elk Grove,
25 California.

26 
27 Caitlyn A. Lopez
28

THE LAW OFFICES OF

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM; ALVIN@YEREMIANLAW.COM

November 19, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

(MRB Foods Inc. and MRB Holdings Corporation as follows)

MRB Foods Inc.
4865 Joule Street, Suite C5
Reno, NV 89502
Certified Mail Tracking Number: 7018 3090 0000 6140 4870

MRB Holdings Corporation
4865 Joule Street, Suite C5
Reno, NV 89502
Certified Mail Tracking Number: 7018 3090 0000 6140 4870

Paracorp Incorporated
Agent for Service for MRB Foods Inc. and MRB Holdings Corporation
2804 Gateway Oaks Drive #100
Sacramento, CA 95833
Certified Mail Tracking Number: 7019 2970 0000 5058 2977

**Re: Labor Code § 2698, et seq. Penalties
PAGA Notice Letter to LWDA
Eric Ingalls, et al. v. MRB Foods Inc., MRB Holdings Corporation, et al.
Superior Court for the County of Sacramento**

Gentlepersons:

This office represents Plaintiff Eric Ingalls ("Plaintiff") and other similarly aggrieved employees employed as non-exempt restaurant workers Defendants' California locations (collectively "Aggrieved Employees") for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants MRB Foods Inc., MRB Holdings Corporation, and Does 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Sacramento County Superior Court, and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff’s class-wide claims and representative claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiff brings this action on behalf of himself and all other similarly situated current and former Aggrieved Employees within the State of California who are or were employed as non-exempt hourly restaurant workers and in related positions by Defendants.

Defendants are franchisees of Burger King® and operate several restaurant locations in California and Nevada, including those where Plaintiff was assigned by Defendants to work in and around Sacramento County and Placer County. Plaintiff and the Aggrieved Employees worked as hourly, non-exempt employees and crew members at Defendants’ California restaurant locations. Plaintiff was employed by Defendants during the relevant period as a crew member and non-exempt hourly employee at several of Defendants’ restaurants in and around Sacramento and Placer Counties. Upon information and belief, the other Aggrieved Employees were employed by Defendants at restaurant locations in Sacramento County and at other locations in California, and were responsible for taking and preparing food orders for Defendants’ customers and performing restaurant clean up and maintenance duties.

Plaintiff and the other similarly situated Employees of Defendants worked at Defendants’ restaurant locations in California at Defendants’ behest without being paid all wages due and without being provided all their required meal periods and rest breaks. Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Aggrieved Employees who served in similar and related positions. Defendants required Plaintiff and the Aggrieved Employees to work off the clock and failed to record accurate time worked by these Employees, failed to pay them at the appropriate rates for all hours worked, failed to pay all wages due and owing at termination or resignation, and provided Aggrieved Employees with inaccurate wage statements that prevented them from learning of these unlawful pay practices.

Defendants also failed to provide Aggrieved Employees with lawful meal and rest periods, as Employees were required to remain under Defendants' control and were not provided with the opportunity to take full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

During the course of the Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.

Aggrieved Employees generally worked five or six days per workweek. Plaintiff was generally scheduled for shifts that ranged from eight to ten hours or more, and often worked over 60 hours in a work week. Schedules were posted weekly listing the shifts the Aggrieved Employees would be working that week, and the schedules did not reflect meal period or rest break times.

Defendants required Aggrieved Employees to make time entries into their POS system using their employee badge or ID number. Despite the fact that Defendants' timekeeping system was capable of recording hours worked to the minute, Aggrieved Employees were compelled by Defendants' managers to work substantial hours off the clock and without compensation, both before and after their shifts and during them. Defendants' managers required Aggrieved Employees to work however many hours it took to complete the required work in response to customer demands. However, Defendants required Aggrieved Employees to input timekeeping entries that conformed generally to their scheduled shift times or else edited timekeeping entries to take away hours worked before payroll processing.

Plaintiff, and upon information and belief the other Aggrieved Employees, were instructed by Defendants' management to perform work to prepare for their shifts before they were clocked in and also required them to continue working after they had clocked out. For example, Plaintiff was instructed by his general manager that if all his tasks were not finished at the end of his shift, he was to clock out and stay after to finish them. Plaintiff estimates he was required to clock out and continue working at least twice per work week, and this time Defendants required him to work off the clock ranged from 15 minutes to as many as two to three hours.

Similar off the clock and record keeping violations occurred with respect to meal periods, as they were not scheduled and were often not provided or were unlawful when provided. Defendants' managers would require Plaintiff to input meal period beginning and ending times that evidenced compliant, timely, uninterrupted, and off duty meal periods or else Defendants would edit or otherwise round hours recorded to reflect scheduled hours or conform to other labor budgeting requirements. In reality, meal periods were either not provided or were provided for substantially less than 30 minutes or required performance of work related tasks while on breaks that were supposed to be duty free or were provided after five hours of work in a shift. Upon information and belief, the other Aggrieved Employees endured similar violations at Defendants' hands.

In most instances, Aggrieved Employees endured the above described off the clock work at a point in time past eight hours into a work shift, and the hours incurred off the clock by the Aggrieved Employees should have been paid at the overtime premium rate. Defendants also failed to account for and pay all the overtime hours Plaintiff worked in a work week or pay

period. For example, Plaintiff and upon information and belief the Aggrieved Employees, received wages statements every two weeks and included at least two weeks of work time. In many instances, the wage statements Plaintiff received reflected hours being paid at only the regular rate that was over forty in a work week and/or eight hours in a work day. Defendants therefore either systematically failed to pay overtime as required for all work shifts over eight hours or for any hours worked past 40 in a work week. Defendants thus failed to accurately record all hours worked by the Aggrieved Employees by requiring them to work off the clock and by rounding or shaving or otherwise unlawfully deducting wages, and failed to pay all hours worked at their appropriate and required regular and premium hourly wage rates.

By requiring both pervasive and systematic off the clock work and rounding and editing time records, and by uniformly and automatically deducting 30 minutes for alleged compliant meal periods, Defendants effectively required Aggrieved Employees to work more hours on a work shift than Defendant paid them for. These unpaid hours at the end of work shifts also resulted in Aggrieved Employees incurring overtime hours earlier than Defendants started paying them.

Plaintiff was therefore not paid for all his hours worked at the required minimum, overtime and double time wage rates due to Defendants' policy and practice of requiring him to work off the clock and without pay, and Defendants failed to pay Plaintiff at the required overtime rates for all hours over eight in a shift, or over forty in a work week. With work shifts generally being scheduled for eight hours or more, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

Defendants thus systematically underpaid Aggrieved Employees by failing to pay them at the required rates for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day at the required double time rate. Upon information and belief, the Aggrieved Employees were bound by similar scheduling and work policies which Defendants required them to follow, and endured similar violations at Defendants' hands as Plaintiff.

Defendants have therefore either failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the nature and extent of the off the clock work Defendants' required and the actual hours Plaintiff worked, or have otherwise declined to produce them to Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked, and by deducting time for meal periods that were not lawfully provided, Defendants have committed knowing and intentional ongoing violations of the record keeping requirements under the Labor Code, including section 1174.

The failure to pay for all hours worked and underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at restaurant locations throughout California. As a result of the above described unlawful requirements to work off the clock, the failure to accurately record all hours worked and pay wages at the correct rates, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight or twelve hours in any given day and/or more than forty hours in any given week. As a

result of Defendants' unlawful policies and practices, Plaintiff and Aggrieved Employees incurred overtime hours and double time hours worked for which they were not adequately and completely compensated, in addition to the hours they were required to work off the clock at their regular rates.

Defendants also failed to provide Aggrieved Employees with their required first and second meal periods, and their first, second, and third required rest breaks. The above described off the clock work contributed to Defendants' common policy of failing to provide lawful meal periods to Aggrieved Employees, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to authorize and permit Plaintiff and the Aggrieved Employees to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

Aggrieved Employees generally worked shifts that entitled them to receive at least one meal period and two rest breaks. However, Defendants failed to provide all required meal periods and rest breaks to them. Defendants' uniformly applied policies and practices systematically failed to provide required duty-free meal periods to Aggrieved Employees. If and when Plaintiff received a meal break, it was generally for much less than thirty minutes, was later than five hours into his shift, and was on-duty.

Aggrieved Employees endured systematic meal period violations. Meal periods were not scheduled and were often not provided or off-duty but Defendants' managers would require Aggrieved Employees to input meal period beginning and ending times that evidenced compliant, timely, uninterrupted, and off duty meal periods. Generally the aspirational meal period schedules that Defendants' managers would attempt to set were changed due to daily job requirements and customer demands, and Defendants prioritized making timekeeping records reflect timely and lawful meal periods over actually scheduling and providing them. When Plaintiff complained about understaffing and not receiving meal periods or rest breaks, his general manager told him that sometimes he gets a lunch and sometimes he does not because its Burger King®. When Plaintiff was able to take any time away for a meal break, he generally was required to return to work before 30 minutes by work demands and customer requirements or to take only a short break outside the building while remaining on Defendants' premises. On the occasions when Plaintiff worked over ten hours in a work shift, he also did not receive a second meal period, and upon information and belief Defendants' uniformly applied policy and procedure across its California locations is to not provide second meal periods.

When Aggrieved Employees worked over ten hours on a shift, Defendants failed to provide them with a second uninterrupted and duty-free thirty minute meal period. Defendants' unlawful timekeeping practices consistently applied to all employees, as managers and supervisors maintained timekeeping records for them reflecting they worked from their scheduled shift start time to the scheduled shift end time, and also automatically reflecting that a 30 minute unpaid meal period had been timely provided to them without incident. In reality, meal periods were either untimely or not provided or were provided for substantially less than 30 minutes.

As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have either failed to

maintain required records of when meal periods were actually provided or failed to produce them in response to Plaintiff timely and lawful requests, or else maintained inaccurate and incomplete records. Defendants also failed to pay Employees “premium pay,” i.e. one hour of wages at each Employee’s effective hourly rate of pay, for each meal period or rest break that Defendants failed to provide or deficiently provided. Therefore, Aggrieved Employees were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required meal breaks due to Defendants’ policies and practices. On the occasions when Aggrieved Employees were provided with a meal period, it was often provided after five hours into a work shift and was therefore untimely or was interrupted, or was impermissibly shortened, and Employees were not provided with one hour’s wages in lieu thereof.

Defendants also failed to authorize and permit Aggrieved Employees to take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction thereof. Rest breaks were not scheduled, and management did not emphasize the requirement to provide at least one ten minute duty-free rest period for each four hour duty period, or major fraction thereof. Plaintiff was rarely authorized or able to take an uninterrupted, duty-free rest break during his work shifts.

There were similar issues with the required net-ten minute rest breaks that Aggrieved Employees were unable to take as with meal periods. Defendants failed to schedule or otherwise account for required rest breaks during scheduled shifts entitling Aggrieved Employees to at least two to three rest breaks. If Aggrieved Employees were ever able to take a rest break, it was only for a moment and they quickly returned to work, and any rest or bathroom break was permissible only when Defendants’ job requirements or customer demands allowed for it. If and when Aggrieved Employees were provided with a rest break on a shift, they were often not provided with the required second or third rest period or else they were interrupted or shortened by work demands and were not off-duty.

Defendants did not schedule any required ten minute rest breaks, and Aggrieved Employees were compelled by work requirements and scheduling demands to continue working throughout their shifts without receiving their required first, second, and third rest breaks. Even the rest breaks they were authorized and permitted to take were often interrupted regarding work matters. Therefore, the job requirements and duties required of Aggrieved Employees, and the demands from management and customers, manifested a failure to authorize and permit Aggrieved Employees to take all their required rest breaks.

Defendants have also consistently failed to provide Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by the above-described requirement of off the clock work, failure to pay all overtime and double time, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Aggrieved Employees, during the liability period, because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Time clock punches were not maintained or were not accurately maintained for work shifts and meal periods, which were automatically presumed by Defendants to have been lawfully provided when they were not.

Defendants also failed to accurately record and pay for all regular and overtime hours worked by Aggrieved Employees.

Defendants also provided Aggrieved Employees with wage statements that failed to accurately report all hours worked and applicable hourly rates for all hours worked. Plaintiff and the Aggrieved Employees were unable to discern from their wage statements alone the actual hours they worked in total during a pay period. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing wage statements that inaccurately reported total hours worked and total wages earned by Aggrieved Employees, along with the appropriate applicable rates, among other requirements. Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime and double time premium wages owed for work conducted on a work shift and a workday, as addressed above. Given the above described off the clock work and unlawful rounding and deductions from hours worked perpetrated by Defendants' management, Plaintiff would often notice on his wage statements that he was being paid for substantially fewer hours than he actually worked, and that he was not paid at the correct overtime or double time rate or for all hours he worked after eight hours or twelve hours into a shift or over forty in a work week. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204.

Defendants also required Plaintiff and the Aggrieved Employees to work hours off the clock for which they were not compensated, including unlawfully rounded time or time or other off the clock work, and during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime and double time premium wages owed for work conducted on a work shift and a work-day, as addressed above. Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to Aggrieved Employees at the time of their termination or within seventy-two hours of their resignation, as required by California wage-and-hour laws. Labor Code §§ 201-203. In view of the above addressed violations, Defendants have also failed to pay all wages owed to Plaintiff and the Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204.

Defendants have regularly required Aggrieved Employees to incur necessary business expenses in the course of performing their required job duties without reimbursement. Defendants required Aggrieved Employees to incur business expenses by using their personal cellular phones to communicate with Defendants and their managers regarding work matters and scheduling, including while on duty. Plaintiff estimates that approximately 40% of his monthly cellular

phone and data usage expenses were generated from work related calls and text messages or for completing work requirements. Defendants further required Plaintiff and certain Aggrieved Employees to drive previous accumulated cash receipts to the bank for deposit into Defendants' accounts. Defendants failed to reimburse these Aggrieved Employees for any mileage or other vehicle use and maintenance necessitated in performing their job duties. Upon information and belief, Defendants followed the same unlawful expense reimbursement policies in connection with the other Aggrieved Employees, who must be reimbursed for these necessary business expenses under Labor Code § 2802.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

Defendants failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants' control and due to the work demands placed upon them by Defendants' management and due to unlawful rounding. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Aggrieved Employees, including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the

Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime and double time. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates. Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.

Defendants have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties. When considered in combination with the unlawful rounding to their detriment, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7, 512 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks. Defendants also automatically deducted 30 minutes per work shift for a meal periods without regard to whether it was actually and lawfully provided.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants required Aggrieved Employees to remain on call during breaks to respond job requirements or imposed work requirements that prevented time for breaks.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as

provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, as discussed above. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

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Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204.

Given the above described off the clock work and unlawful rounding and deductions from hours worked perpetrated by Defendants' management, Plaintiff would often notice on his wage statements that he was being paid for substantially fewer hours than he actually worked, and that he was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the

forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802

Defendants have regularly required Aggrieved Employees to incur necessary business expenses in the course of performing their required job duties without reimbursement. Defendants required Aggrieved Employees to incur business expenses by using their personal cellular phones to communicate with Defendants and their managers regarding work matters and scheduling, including while on duty. Plaintiff estimates that approximately 40% of his monthly cellular phone and data usage expenses were generated from work related calls and text messages or for completing work requirements. Defendants further required Plaintiff and certain Aggrieved Employees to drive previous accumulated cash receipts to the bank for deposit into Defendants' accounts. Defendants failed to reimburse these Aggrieved Employees for any mileage or other vehicle use and maintenance necessitated in performing their job duties. Upon information and

belief, Defendants followed the same unlawful expense reimbursement policies in connection with all Aggrieved Employees. They must be reimbursed for these necessary business expenses under Labor Code § 2802.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover, and hereby seeks through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." As discussed above, Defendants unlawfully received and/or collected wages from the Aggrieved Employees by implementing a policy understating the hours worked and by requiring off the clock work, as alleged above. By not compensating Employees for all hours worked and failure to pay for hours spent under Defendants' control, Defendants unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221.

In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including

the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: 201, 201.3, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 *et seq.*, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil

penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

(f) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against MRB Foods Inc., MRB Holdings Corporation, and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in a Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.

David Yeremian

Cc: MRB Foods Inc. and MRB Holdings Corporation by Certified Mail

EXHIBIT D



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

Estimate #:	13841V3	Prepared By:	Michael Sutherland
Estimate Date:	9/13/2021	Direct Dial #	321-223-5067
		Email:	msutherland@simpluris.com

Plaintiff Attorney
Attorney/Client: **Brittany Berzin**
Firm: **Shimoda Law**
Email: [Brittany Berzin <bberzin@shimodalaw.com>](mailto:Brittany.Berzin<bberzin@shimodalaw.com>)

Defense Attorney
Attorney/Client:
Firm:
Email:

Case Name: Leong-Call v. MRB Foods Inc.:All In Settlement

Spanish

Anticipated Total Cost	\$9,398
Capped Fee*	\$9,400

Terms:

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

Total Possible Class Size:	390	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	10%
Mailing Document Language:	English, Spanish	Fund Distribution:	Simpluris
Reminder Postcard:	No	Redistribution:	No
Unclaimed Funds:	Cy Pres	State(s):	CA
		Tax Years	One

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup Online posting of document	\$125.00	6	\$750.00
Translation	\$0.25	2,500	\$625.00
Database Manager - Initial Data Analysis	\$140.00	6	\$840.00
Total			\$2,215.00

Notification

Notice Packet: 6 Pg Notice - Double Sided - English

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.10	390	\$429.00
Postage	\$0.58	390	\$226.20
NCOA/CASS/LACS	\$0.05	390	\$19.50
Undeliverable Processing	\$0.25	39	\$9.75
Skip Trace RUM	\$1.00	39	\$39.00
Remail Notice Packet	\$1.20	33	\$39.78
Remail Postage	\$0.58	33	\$19.23
Mailing Supervisor	\$50.00	1	\$50.00
Total			\$832.46

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	4	\$300.00
800 # Charges	\$0.10	240	\$24.00
Total			\$300.00



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

Administration

Process Mail, Opt-Outs or Objections			
Category	Unit Value	# of Units	Total
Database Manager	\$125.00	2	\$250.00
Resolving Mismatched TINs	\$75.00	2	\$150.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	4	\$9.75
Opt Out Processing	\$1.00	4	\$3.90
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	2	\$250.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$713.65

Distribution

Setup a Disbursement Account			
Print & Mail Checks to Class Members:W2/ 1099's - File Reports with Appropriate Federal & State Taxing Authorities			
Account Management & Reconciliation			
Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	4	\$560.00
Disbursement Manager - Data Validation	\$75.00	2	\$150.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check-W2, 1099,2 pg. notice	\$2.00	390	\$780.00
Postage	\$0.58	390	\$226.20
Process Returned Checks	\$0.50	4	\$1.95
Skip Trace Search Undeliverable Checks	\$3.00	4	\$11.70
Remail Checks	\$4.00	4	\$15.60
Postage	\$0.58	4	\$2.26
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$500.00	1	\$500.00
QSF Annual Tax Preparation Fee	\$1,000.00	1	\$1,000.00
Reissuing Checks/Mailing	\$3.00	4	\$11.70
Postage	\$0.58	4	\$2.26
Responding to IRS, State, Agency Inquiries	\$75.00	1	\$75.00
Disbursement Manager	\$125.00	4	\$500.00
Total			\$4,736.67



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

Case Wrap Up

Send Final Reports to Counsel			
Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc	\$50.00	2	\$100.00
Project Manager-Wrap-up Final Issues	\$125.00	2	\$250.00
Total			\$600.00

Postage \$471.63 **Total Case Costs** **\$9,397.78**



Class Action Settlement Administration

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

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

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

Simpluris Security Summary – White Paper

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

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

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

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

EXHIBIT E

Plaintiff Leong-Call Costs - Shimoda Law Corp.

Date	Description	Cost
9/9/2020	Payment for Records - Sac Case Search Def	\$1.00
9/30/2020	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Westlaw Research Fees	\$500.00
10/5/2020	Payment to LWDA - PAGA Filing Fee	\$75.00
10/13/2020	Service Fee to Court - Complaint	\$40.00
10/13/2020	Payment to Court - Complaint Fee Superior Court	\$435.00
11/3/2020	Payment for Records - Complaint from Sac Superior Court	\$8.20
11/10/2020	ALS Service Fee - Serve MRB Foods Inc. With Complaint	\$45.00
11/16/2020	Service Fee to Court - Notice of Depositing Complex Fees	\$40.00
11/16/2020	Payment to Court - Complex Fees	\$1,000.00
12/21/2020	Service Fee to Court - First Amended Complaint	\$40.00
3/17/2021	Mediation - Payment to Mediator	\$6,000.00
3/17/2021	Certified Mail - Payment to Mediator	\$4.11
9/7/2021	Mediation - Meal	\$25.94
9/21/2021	Service Fee to Court - Case Management Statement	\$40.00
10/5/2021	Mediation - Berger Consulting Data Analysis	\$3,487.50
10/25/2021	Payment to Court - Stip and Order to Amend Complaint	\$20.00
10/25/2021	Service Fee to Court - Stip and Order to Amend Complaint	\$40.00
10/27/2021	Service Fee to Court - Stip and Order to Amend Complaint (Second Submission)	\$40.00
11/8/2021	Service Fee to Court - Second Amended Complaint	\$40.00
Anticipated	Service Fee to Court - Case Management Statement	\$40.00
Anticipated	Payment to Court - Preliminary Approval Motion	\$60.00
Anticipated	Service Fee to Court - Preliminary Approval Motion	\$40.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	Service Fee to Court - Final Approval Motion	\$40.00
Anticipated	UPS to OC - Final Approval Motion	\$27.00
Anticipated	UPS to Co-counsel - Final Approval Motion	\$27.00
Anticipated	Service Fee to Court - Case Management Statement	\$40.00
Anticipated	Service Fee to Court - Compliance Declarations	\$40.00
		\$12,255.75

Cost report for INGALLS v. MRB FOODS INC.

<i>Date</i>	<i>TaskCode</i>	<i>Payee</i>	<i>Description</i>	<i>Cost</i>	<i>Acct/Check No</i>
11/19/2020		LWDA	PAGA LETTER	\$75.00	PAGA LETTER VISA
11/19/2020		Rapid Legal	SUMMONS & COMPLAINT - filing fee and complex fee advanced	\$1,579.73	Filing
12/10/2020		Rapid Legal	PROCESS OF SERVICE - MRB FOODS INC.	\$72.28	SERVICE
12/10/2020		Rapid Legal	PROCESS OF SERVICE - MRB HOLDING CORPORATION	\$72.28	SERVICE
12/15/2020		Rapid Legal	PROOF OF SERVICE - 2 ENTITIES	\$30.98	Filing
2/11/2021		Rapid Legal	NTC OF CMC AND COMPLEX CASE MANAGEMENT PRODECURES (6.25.21)	\$67.11	Filing
3/11/2021		ORTMAN MEDIATION,	MEDIATION (9.7.21)	\$6,000.00	MEDIATION 4437 & 4
6/15/2021		Rapid Legal	FAC; JOINT INITIAL CMC REPORT (6.25.21)	\$164.68	Filing
10/5/2021		Rapid Legal	REQUEST FOR DISMISSAL; DEC OF ABL; [P]O	\$67.11	Filing

TOTAL COST **\$8,129.17**

Total Cost By Account

Filing	\$1,909.61
MEDIATION	\$6,000.00
PAGA LETTER	\$75.00
SERVICE	\$144.56

Plaintiff Eric Ingalls Costs - United Employees Law Group, PC

Date	Description	Cost
Dec-20	Postage/copying	\$4.00

EXHIBIT F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

ANALISA LEONG-CALL and ERIC INGALLS,
individually and on behalf of all other similarly
situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
SANJAY LILLANEY, an individual; CONNIE
GAMMON, an individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No. **34-2020-00287486**

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: Current and former non-exempt employees of Defendants in California from October 5, 2019 to [REDACTED] (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on [REDACTED], you are receiving notice of a proposed class action settlement between Plaintiffs Analisa Leong-Call and Eric Ingalls ("Plaintiffs" or "Class Representatives") and Defendants MRB Foods Inc., Sanjay Lillaney and Connie Gammon ("Defendants") on behalf of Class Members as defined above. You are receiving this notice because Defendants' records indicate you fall within the definition of "Class Member." Defendants' records also indicate that you worked [REDACTED] workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

Plaintiffs Analisa Leong-Call and Eric Ingalls, former employees, filed a Complaint against Defendants in the California Superior Court for the County of Sacramento on behalf of themselves and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2020-00287486. The Class Period is October 5, 2019 to [REDACTED] (the "Class Period").

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves and Class Members. Plaintiffs alleged that Defendants violated California law by 1) failing to incorporate the value of nondiscretionary bonuses into putative class members' regular rates of pay for the purpose of calculating overtime wages and paid sick time; 2) failing to pay putative class members for all hours worked, including overtime hours (requiring off the clock work pre and post shift and requiring clock outs for meal periods not taken); 3) contacting putative class members on their personal cellphones during shifts and failing to reimburse for cellphone use; 4) requiring putative class members to use their personal vehicles to drive to other restaurants and make bank deposits and failing to reimburse mileage; 5) failing to authorize and permit all meal and rest periods (missed

lunches, late lunches, and no second lunch for shifts over 10 hours); and 6) failing to pay accrued but unused vacation wages upon separation. Defendants have denied all of Plaintiffs' allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants agrees to pay a total sum of Two Hundred Thousand Dollars and No Cents (\$200,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$70,000, attorneys' costs not to exceed \$22,000, Claims Administrator Costs estimated not to exceed \$15,000, Class Representatives' Enhancement Payment of \$10,000 each, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as current and former non-exempt employees of Defendants in California from October 5, 2019 to _____.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 90% for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 10% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendants' records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims contained in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period.

Aggrieved Employees will be deemed to have released all Private Attorneys General Act claims for civil penalties contained in Plaintiffs' letters to the LWDA and/or operative Complaint during the PAGA Claim Period.

The individuals released ("Released Parties") means Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, insurers, and anyone acting on their behalf.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendants have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$70,000, and attorneys' costs not to exceed \$18,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representatives and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or want to be excluded from this settlement; (c) identify the case

name and number (i.e. *Leong-Call, et al. v. MRB Foods Inc., et al.*, 34-2020-00287486); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than _____. If you submit a request to opt out which is not postmarked by _____, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not receive their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. *Leong-Call, et al. v. MRB Foods Inc., et al.*, 34-2020-00287486) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiffs and Defendants at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiffs and Defendants. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendants and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 54, 813 6th Street Sacramento, CA on _____ at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

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VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendants' Counsel as follows:

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

Laura A. Wolfe
McCormick Barstow LLP
7647 North Fresno Street
Fresno, CA 93720
Telephone: (55) 433-2160
Facsimile: (559) 433-2300
On behalf of Defendants

David Yeremian
Alvin B. Lindsay
DAVID YEREMIAN AND ASSOCIATES, INC.
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
On behalf of Plaintiff Eric Ingalls

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT G

1 Galen T. Shimoda (Cal. State Bar No. 226752)
 Justin P. Rodriguez (Cal. State Bar No. 278275)
 2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
 3 9401 East Stockton Boulevard, Suite 120
 Elk Grove, CA 95624
 4 Telephone: (916) 525-0716
 Facsimile: (916) 760-3733

5 Attorneys for Plaintiff ANALISA LEONG-CALL

6 *Caption continued on next page*

7
 8 **SUPERIOR COURT OF CALIFORNIA**
 9
 10 **FOR THE COUNTY OF SACRAMENTO**

11 ANALISA LEONG-CALL and ERIC
 12 INGALLS, individually and on behalf of all
 13 other similarly situated employees,

14 Plaintiffs,

15 vs.

16 MRB FOODS INC., a California Corporation;
 17 SANJAY LILLANEY, an individual;
 18 CONNIE GAMMON, an individual; and
 DOES 1 to 100, inclusive,

19 Defendants.

Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

**DECLARATION OF JUSTIN P.
 RODRIGUEZ IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION AND PAGA SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

1 DAVID YEREMIAN & ASSOCIATES, INC.

David Yeremian (SBN 226337)

2 Alvin B. Lindsay (SBN 220236)

535 N. Brand Blvd., Suite 705

Glendale, California 91203

3 Telephone: (818) 230-8380

4 Facsimile: (818) 230-0308

5 UNITED EMPLOYEES LAW GROUP, PC

Walter Haines (SBN 71075)

5500 Bolsa Ave., Suite 201

6 Huntington Beach, CA 92649

7 Telephone: (562) 256-1047

Facsimile: (562) 256-1006

8 Attorneys for Plaintiff ERIC INGALLS

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiffs Analisa Leong-Call. I am making this declaration on
4 behalf of the named Plaintiffs Analisa Leong-Call and Eric Ingalls ("Plaintiffs"), the putative class
5 members, and in support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA
6 Settlement ("Motion"). A true and correct copy of the Joint Stipulation Regarding Class Action and
7 PAGA Settlement and Release ("Agreement") in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiffs' contention
9 that Defendants MRB Foods Inc., Sanjay Lillaney and Connie Gammon ("Defendants") are liable for
10 failure to pay minimum wages and for all hours worked, failure to pay overtime, meal period
11 violations, rest period violations, wage statement violations, untimely payment of wages, failure to pay
12 final wages, failure to reimburse expenses, unfair competition, failure to pay accrued vacation, failure
13 to provide paid sick leave, failure to keep accurate records and unlawfully collecting or receiving wages
14 in violation of Labor Code section 221. Plaintiffs also alleged liability for civil penalties under the
15 Private Attorneys General Act ("PAGA"). These claims were based allegations that Defendants
16 violated California law by 1) failing to incorporate the value of nondiscretionary bonuses into putative
17 class members' regular rates of pay for the purpose of calculating overtime wages and paid sick time;
18 2) failing to pay putative class members for all hours worked, including overtime hours (requiring off
19 the clock work pre and post shift and requiring clock outs for meal periods not taken); 3) contacting
20 putative class members on their personal cellphones during shifts and failing to reimburse for cellphone
21 use; 4) requiring putative class members to use their personal vehicles to drive to other restaurants and
22 make bank deposits and failing to reimburse mileage; 5) failing to authorize and permit all meal and
23 rest periods (missed lunches, late lunches, and no second lunch for shifts over 10 hours); and 6) failing
24 to pay accrued but unused vacation wages upon separation. The PAGA, waiting time penalty, wage
25 statement violation, and unfair competition claims also derive from these violations.

26 3. Plaintiffs are the only named representatives in this matter. From our initial
27 investigations of Plaintiffs' claims and documents, we believed these claims had merit and could be
28 maintained as a class action. On or about October 5, 2020, Plaintiff Leong-Call sent notice to the

1 LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime, wage
2 statement violations, failure to pay final wages, unfair competition, failure to reimburse expenses,
3 failure to pay accrued vacation, meal period violations and rest period violations, and failure to provide
4 paid sick leave. On or about November 19, 2020 Plaintiff Ingalls sent notice to the LWDA to exhaust
5 administrative remedied under the PAGA for failure to pay minimum wages and for all hours worked,
6 failure to pay overtime, meal period violations, rest period violations, wage statement violations,
7 untimely payment of wages, failure to pay final wages, failure to reimburse expenses, unfair
8 competition, failure to keep accurate records and unlawfully collecting or receiving wages in violation
9 of Labor Code section 221. True and correct copies of the notices filed with the LWDA are being filed
10 with this Motion as Exhibit C. Copies of the notices were also sent to Defendants via certified mail and
11 the \$75.00 filing fee was remitted to the LWDA. There was no response by the LWDA regarding its
12 intent to investigate the claims alleged in Plaintiffs' notices for more than 65 days. As such, Plaintiffs
13 became authorized to commence a civil action under the PAGA. On or about October 14, 2020,
14 Plaintiff Leong-Call filed a class action Complaint in Sacramento County Superior Court. Plaintiff
15 Leong-Call filed a First Amended Complaint on approximately December 21, 2020 to add a PAGA
16 cause of action based on the violations alleged in the October 5, 2020 notice to the LWDA. On or
17 about November 19, 2020, Plaintiff Ingalls filed a class action Complaint in Sacramento County
18 Superior Court. Plaintiff Ingalls filed a First Amended Complaint on approximately June 14, 2021 to
19 add a PAGA cause of action based on the violations alleged in the October 5, 2020 notice to the
20 LWDA. Plaintiffs filed a Second Amended Complaint on November 8, 2021. A true and correct copy
21 of Plaintiffs' operative Complaint is filed with this Motion as Exhibit B. A copy of the complaint was
22 uploaded to the LWDA on December 13, 2021, after we received an endorsed copy back from Court.

23 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

24 5. Defendants are represented in this matter by Laura A. Wolfe of McCormick Barstow
25 LLP. From the beginning, Defendants have contested the merits of this case, the suitability of the case
26 for class action or representative treatment, the manageability of the case at trial, and Plaintiffs' ability
27 to prove a violation in each pay period for each employee among other defenses and contentions they
28 made challenging the propriety of this action. Defendants further contended that, even assuming there

1 was a finding supporting the imposition of PAGA penalties, the Court would likely exercise its
2 discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to
3 comply with Labor Code obligations by Defendants. Notwithstanding its agreement to settle this
4 matter, Defendants believe the practices Plaintiffs are contending are unlawful either do not exist or, to
5 the extent they do exist, fully comply with all state and federal employment laws with respect to
6 Plaintiffs and Class Members. Also, Defendants have contended that this matter is not appropriate for
7 class certification outside of this proposed class settlement.

8 6. Based on the expected testimony from Plaintiffs and Class Members, a review of
9 Defendants' policies and procedures and other documents relating to the alleged claims, information on
10 the number of Class Members, Class Members' dates of employment, and a representative sample of
11 Class Members' payroll data, the scope of the potential damages to Plaintiffs and Class Members in
12 light of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations
13 that have taken place, I am convinced that the proposed settlement is in the best interest of the class.
14 The length and risks of trial and other normal perils of litigation that impact the value of the claims were
15 also considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect
16 of potential class certification issues as well as the uncertainty of class certification, the difficulties of
17 complex litigation, and the lengthy process of establishing specific damages and various possible delays
18 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
19 PAGA could be substantially cut at the discretion of the Court even if Plaintiffs were successful on
20 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
21 at separation, which would eliminate the value of the waiting time penalty entirely. Overall, I believe it
22 is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation
23 and potentially obtain zero funds to the class due to legal or factual issues in the case.

24 7. My office, including my partner, Galen T. Shimoda, my associate Brittany V. Berzin, and
25 myself, along with Plaintiffs' assistance, thoroughly investigated the merits of the claims and potential
26 damages for such claims. The parties engaged in informal discovery and exchange of documents,
27 including a representative sampling of employee data, such as timecards, paystubs, and relevant policies
28 for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all

1 aspects of the asserted claims, including certification issues, merits issues, damages, the scope and
2 configuration of Class Members, the content and implementation of the wage and hour policies at issue,
3 issues relating to manageability concerns at trial, among other relevant areas. From this production we
4 were able to determine information critical to a reliable damages analysis such as the average hourly
5 rate, average daily hours worked, average number of workweeks and pay periods that had potential
6 violations based on the asserted claims, the frequency with which violations occurred in a given week
7 and/or pay period, and the number for former employees. This information allowed my office to assess
8 both liability and damages and create an accurate damages model. Plaintiffs assisted in all aspects of
9 this litigation including providing factual information relating to Plaintiffs' and similarly situated
10 employees' employment conditions, providing witness information, providing a substantial number of
11 documents, and answering questions regarding Defendants' factual contentions in this matter. This was
12 important because it directly related to our ability to maintain this case as a class action and our ability
13 to obtain a favorable settlement for the class.

14 8. Throughout this litigation our office had numerous communications with Defendants'
15 Counsel discussing our respective positions. The parties engaged in mediation on September 7, 2021
16 using an experienced mediator, Francis J. Ortman III. It was only after nearly one year of arm's length
17 negotiations that the parties were able to reach a settlement, which only occurred after a full-day
18 mediation. The negotiations were at all times contentious and adversarial, though still professional in
19 nature.

20 9. The parties reviewed and analyzed substantial amounts of data regarding the class
21 claims. Based on our analysis and review of all relevant documents and Class Member information, I
22 have determined that the maximum damages for the asserted class claims is approximately
23 \$12,059,353, which includes civil penalties under the PAGA. The likely exposure for PAGA penalties
24 is approximately \$10,239,000, based on the counts alleged to the LWDA and the class data. Based on
25 our research, we did not find any prior Labor Commissioner or court decisions that stated Defendants'
26 practices and/or policies were improper. As such, a "subsequent violation" may not be found for
27 penalty calculation purposes and the exposure analysis here is based on an "initial violation" valuation
28 being adopted by any fact finder if this matter went to trial.

1 10. I believe the PAGA penalties in this case may be reduced however due to the fact that
2 the penalties would be in addition to amounts owed for substantive violations and much of the penalties
3 are based on violations due to technical non-compliance with the Labor Code. Furthermore,
4 Defendants produced a substantial number of documents that a Court may find demonstrates a good
5 faith attempt at compliance that merits the reduction of civil penalties. Courts regularly cut civil
6 penalties on PAGA claims where statutory penalties for the same violations are assessed as well. The
7 statutorily authorized discretion that Courts have used to reduce penalties ranges substantially. *See*
8 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
9 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
10 Thus, civil penalties may be cut to approximately \$1,843,020 (82% reduction) or lower given the
11 derivative recovery. Taking this into account, the likely recovery if Plaintiffs were successful at trial on
12 proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties
13 would be approximately \$3,663,373. Taking this into account, Plaintiffs' \$200,000 gross recovery
14 under the Agreement represents approximately 5.5% of the maximum likely value in this matter. After
15 deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs,
16 any Enhancement Payment to the Class Representatives, estimated Claims Administrator Costs, and the
17 75% portion of the PAGA Payment to the LWDA, the net recovery under the Agreement represents
18 approximately 2% of the maximum likely value in this matter. I believe the Agreement represents a
19 reasonable compromise of claims based on the legal and factual disputes in this case. The ability to
20 secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than
21 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this
22 Agreement.

23 11. I am a shareholder at Shimoda Law Corp. In agreeing to represent Plaintiff Leong-Call
24 and take on the case for all Class Members, I agreed to take this case on a contingency basis, meaning
25 that I would take a percentage of any settlement or judgment should we recover a monetary amount. I
26 took a risk that we would not recover any money in this matter if we were unsuccessful at trial. I also
27 took on the risk that the case may not be certified as a class action and/or be subject to an unfavorable
28 summary judgment ruling. However, I believe it is important to make sure employees are able to find

1 affordable representation in order to ensure that employers are complying with all their legal
2 obligations towards employees and paying employees all their hard-earned wages.

3 12. My law firm is a boutique law practice that focuses primarily in employment litigation,
4 emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a
5 Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the
6 Philosophy program. I was one of only two recipients of this award out of the entire Philosophy
7 Department. After U.C. Davis, I attended the University of the Pacific, McGeorge School of Law,
8 graduating in 2011 and receiving a Juris Doctorate. I graduated in the top 20% of my class and was a
9 member of the Traynor Honor Society at McGeorge. Other academic achievements of mine include
10 receiving a Witkin Award (top grade) in my legal research and writing course, a Witkin Award in
11 complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative
12 Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for
13 the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being
14 selected as a Sacramento County Bar Association Diversity Fellow in 2009. I was also a member of
15 the Employment and Labor Law Society and an officer for the Latino Law Students Association from
16 2009 to 2010.

17 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
18 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Since 2017, I have
19 received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards.
20 From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). In September 2018, I
21 was a panel speaker for the Sacramento County Bar Association Labor and Employment Law Section's
22 presentation of "*Epic Systems*, PAGA, and the Future of Employment Arbitration in California." In
23 July 2020, I was a panel speaker for the Association of Defense Counsel of Northern California &
24 Nevada presentation of "Class Actions and PAGA Claims." My practice focuses on complex civil
25 litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act
26 ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm.
27 Class and/or PAGA actions I have litigated or am currently litigating, including the instant case,
28 includes, but is not limited to, the following:

- 1 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 2 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 3 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 4 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup.
- 5 Ct.);
- 6 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-
- 7 0012080 (San Joaquin Sup. Ct.);
- 8 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 9 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 10 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 11 Sup. Ct.);
- 12 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
- 13 Ct.);
- 14 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 15 • *Bershell v. Dignity Health Methodist Hospital Sacramento, et al.*, Case No. 34-2017-
- 16 0222269 (Sac. Sup. Ct.);
- 17 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
- 18 00271174 (Sac. Sup. Ct.);
- 19 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 20 Ct.);
- 21 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac.
- 22 Sup. Ct.);
- 23 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880
- 24 (Sac. Sup. Ct.);
- 25 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 26 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 27 Ct.);
- 28 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);

- 1 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
2 00209613 (Sac. Sup. Ct.);
- 3 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 4 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-
5 2017-00222101 (Sac. Sup. Ct.);
- 6 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 7 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup.
8 Ct.);
- 9 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 10 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 11 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup.
12 Ct.);
- 13 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac.
14 Sup. Ct.);
- 15 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 16 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 17 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 18 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup.
19 Ct.);
- 20 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 21 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup.
22 Ct.);
- 23 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup.
24 Ct.);
- 25 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 26 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 27 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 28 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);

- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

15. My partner, Galen T. Shimoda, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and

1 graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in
2 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the
3 Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a
4 number of employment law articles for journals and our firm regularly publishes articles on our firm's
5 website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
6 Employment Review seminars from 2014 to the present. His speaking engagements include the
7 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
8 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
9 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
10 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
11 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
12 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
13 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
14 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
15 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
16 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
17 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
18 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
19 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
20 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
21 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
22 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
23 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
24 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
25 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
26 as a Super Lawyer from 2014 to present.

27 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
28 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.

1 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
2 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
3 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
4 Federal Courts, including up to certification, settlement, preliminary and final approval, and
5 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
6 Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel
7 include the following:

- 8 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 9 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 10 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 11 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 12 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 13 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 14 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 15 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 16 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
17 Sup. Ct.);
- 18 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 19 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
20 Ct.);
- 21 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
22 Ct.);
- 23 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
24 Sup. Ct.);
- 25 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 26 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
27 Ct.);
- 28 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);

- 1 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
2 00209613 (Sac. Sup. Ct.);
- 3 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 4 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 5 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 6 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
7 (San Joaquin Sup. Ct.);
- 8 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 9 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
10 Sup. Ct.);
- 11 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 12 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 13 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
14 Sup. Ct.);
- 15 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 16 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 17 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 18 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 19 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 20 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 21 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 22 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 23 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 24 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 25 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 26 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 27 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
28 Sup. Ct.);

- 1 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 2 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 3 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 4 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 5 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 6 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 7 00082201 (Sac Sup. Ct.);
- 8 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.
- 9 Sup. Ct.);
- 10 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 11 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 12 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 13 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 14 Sup. Ct.);
- 15 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 16 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 17 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 18 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

22 18. My associate, Brittany V. Berzin, Esq., also worked with me on this matter and was
23 critical in assisting with all aspects of the litigation of this case. In May 2017, Ms. Berzin graduated
24 from University of the Pacific, McGeorge School of Law with Great Distinction and was inducted into
25 the Order of the Coif, graduating in the top 10% of her class. In addition, Ms. Berzin received the
26 Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy,
27 and Criminal Procedure. From 2020 to present, Ms. Berzin has been recognized as a Super Lawyer
28 (Rising Star). Ms. Berzin has been a member of the executive committee of the Sacramento County

1 Bar Association Labor & Employment Section since January 2020, serving as Co-Chair of the
2 committee through 2021. Ms. Berzin has worked on a variety of individual, class action, and Private
3 Attorneys General Act cases involving wage and hour claims. As an associate, some of the class action
4 and/or PAGA cases Ms. Berzin is litigating and/or has litigated as lead or co-counsel include the
5 following:

- 6 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
7 Sup. Ct.);
- 8 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 9 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.
10 Cal.);
- 11 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 12 • *Cirrincione v. American Scissor Lift, Inc., et al.*, Case No. STK-CV-UOE-2018-7558 (San
13 Joaquin Sup. Ct.);
- 14 • *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- 15 • *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- 16 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 17 • *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- 18 • *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- 19 • *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 20 • *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 21 • *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 22 • *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- 23 • *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- 24 • *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- 25 • *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup.
26 Ct.);
- 27 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);

- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Neufield v. Professional Transportation, Inc.*, Case No. 34-2021-00309849 (Sac. Sup. Ct.);
- *Romaine v. Queen of the Valley Medical Center*, Case No. 18CV001642 (Napa Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Thornton v. Resolute Security Group, Inc.*, Case No. 34-2018-00241293 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.)

19. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiffs and our firm have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. I agreed to take this case on a contingency and as a class action with the

1 possibility that I would not receive any compensation for my time and efforts due to issues regarding
2 the merits and/or certification and have carried that risk over the course of the case. I have reviewed
3 fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five
4 percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in
5 employment law cases, the typical percentage negotiated between parties ranges from thirty-five to
6 forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own
7 firm and working with several other firms has been that the typical percentage negotiated between
8 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same
9 factors. I have also reviewed several recent Federal District Court Cases where the Court has approved
10 common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp.
11 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-
12 cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green,*
13 *et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et*
14 *al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC
15 Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern
16 District, Case No. 1:00-cv-05695, which are cited in Plaintiffs' Memorandum of Points and Authorities.
17 I believe my request of \$70,000 (approximately 35%) for attorneys' fees is justified given the results
18 obtained on behalf of the class. Moreover, at this time, my firm has advanced all costs for Plaintiffs
19 and Class Members and has not received any compensation whatsoever for our time expended in this
20 case. The expected costs through final approval are not expected to exceed \$22,000. Attached as
21 Exhibit E is a true and correct copy of the costs incurred prior to the filing of this Motion and the
22 expected costs incurred through the final approval and fairness hearing. Any difference in the actual
23 costs and the maximum amount allocated under the Agreement will be added to the Net Settlement
24 Amount.

25 20. I have used several class action administrator companies in the wage and hour class
26 actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer
27 the proposed class settlement. Simpluris, Inc. has provided a quote for the estimated maximum cost of
28 administering the class settlement of approximately \$9,400. A true and correct copy of a cost estimate

1 provided by Simpluris, Inc. is filed with this Motion as Exhibit D. This is only an estimate, and final
2 pricing may vary depending on the issues, if any, that arise during the administration of the settlement.
3 However, the difference between the actual, lesser costs and \$15,000, if any, will be paid to the
4 participating Class Members on a pro rata basis.

5 21. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
6 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
7 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
8 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
9 Exhibit G.

10 22. A true and correct copy of the proposed Notice of Settlement is being filed with this
11 Motion as Exhibit F.

12 I declare under penalty of perjury under the laws of the State of California that the foregoing is
13 true and correct. Executed this 21st day of December 2021 in Sacramento, California.

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17 Justin P. Rodriguez
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FILED BY FAX

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Brittany V. Berzin (Cal. State Bar No. 325121)
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Attorneys for Plaintiff ANALISA LEONG-CALL

Caption continued on next page

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ANALISA LEONG-CALL and ERIC
INGALLS, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
SANJAY LILLANEY, an individual;
CONNIE GAMMON, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

**DECLARATION OF ANALISA LEONG-
CALL IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

DAVID YEREMIAN & ASSOCIATES, INC.

David Yeremian (SBN 226337)

Alvin B. Lindsay (SBN 220236)

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UNITED EMPLOYEES LAW GROUP, PC

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5500 Bolsa Ave., Suite 201

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Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Attorneys for Plaintiff ERIC INGALLS

1 I, Analisa Leong-Call, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement, and in support of
5 my requested Class Representative Enhancement Payment of up to \$10,000.00. I have personal
6 knowledge of the facts herein, and if called as a witness I could and would competently testify to them.

7 2. I worked for Defendants MRB Foods Inc., Sanjay Lillaney and Connie Gammon
8 ("Defendants") from approximately September 2014 to July 2020 as a non-exempt employee receiving
9 an hourly wage and bonuses. I was subject to Defendants' policies and practices that have been alleged
10 as unlawful in the Complaint and the notice sent to the Labor and Workforce Development Agency,
11 including the following: failure to pay minimum wages for all hours worked, failure to pay overtime
12 due to failing to incorporate the value of bonuses into the regular rate of pay, meal period violations,
13 rest period violations, wage statement violations, untimely payment of wages, failure to pay final
14 wages, failure to reimburse expenses, unfair competition, failure to pay accrued vacation, failure to
15 provide paid sick leave, failure to keep accurate records and unlawfully collecting or receiving wages in
16 violation of Labor Code section 221.

17 3. I have actively participated in the litigation of this case. I have given a detailed account
18 of all the facts related to my employment and the claims asserted in the Complaint. I provided
19 extensive documentation in support of the claims brought against Defendants including paystubs,
20 Defendants' policies, and other documents related to my work with Defendants and to the claims
21 brought in the class action. I also provided information for witnesses with knowledge relating to the
22 claims in this case. I met with and assisted my attorneys in understanding the documents and providing
23 context for Defendants' wage and hour and payroll policies as they applied to me and how I believed
24 they applied to Defendants' other employees.

25 4. My attorneys explained to me the risks and benefits of bringing a class action and a
26 claim under the Private Attorneys General Act. I understood that I took on the risk, both professionally
27 and financially, in pursuing the case as a class and representative action rather than pursuing my claims
28 individually. I understood that pursuing the case as a class action meant that it would take substantially

longer than pursuing a claim with the California Labor Commissioner and that I risked getting nothing in the end, but I believed it was important to make sure that Defendants followed the law for everyone.

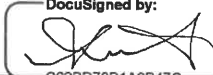
5. I maintained communication with my attorneys throughout the litigation, discussing the facts and policies at issue in the case with the Shimoda Law Corp. I asked questions when I needed clarification about various aspects of this case to make sure there were continually steps taken to advance the interests of the class. I also understood that the recovery in this case was for the benefit of my fellow coworkers, not just for me. When my attorneys contacted me asking about more information or documents related to the case, I made myself available and tried to give or obtain any additional information I could. I participated in the negotiations and settlement discussions in this case, including participating in mediation by phone, speaking with my attorneys to answer questions, provide any additional information needed to assist the negotiations, and discussing the potential terms of the Agreement to evaluate its adequacy.

6. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and Release, discussed the terms with my attorney, and asked my attorneys any questions I had. I believe the settlement terms and allocations are fair and reasonable given the facts of the case.

7. As a Class Representative, I took on the risk of having to pay Defendants' costs if we were unsuccessful in bringing our claims.

8. I understand that any Class Representative Enhancement Payment I may receive is for my participation as a Class Representative and it is not contingent on my support or approval of the Agreement. I do not believe I have any conflicts with any Class Members, and request that the Court preliminarily approve me to serve as a Class Representative and approve the requested enhancement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st of December 2021 in Sacramento, California.

DocuSigned by:

0020D70B1A0B47C...

Analisa Leong-Call

Galen T. Shimoda (Cal. State Bar No. 226752)
 Justin P. Rodriguez (Cal. State Bar No. 278275)
 Brittany V. Berzin (Cal. State Bar No. 325121)
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Attorneys for Plaintiff ANALISA LEONG-CALL

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

ANALISA LEONG-CALL and ERIC
 INGALLS, individually and on behalf of all
 other similarly situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
 SANJAY LILLANEY, an individual;
 CONNIE GAMMON, an individual; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

**DECLARATION OF ERIC INGALLS IN
 SUPPORT OF PLAINTIFFS' MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION AND PAGA SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

1 DAVID YEREMIAN & ASSOCIATES, INC.

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4 UNITED EMPLOYEES LAW GROUP, PC

5 Walter Haines (SBN 71075)

5500 Bolsa Ave., Suite 201

6 Huntington Beach, CA 92649

Telephone: (562) 256-1047

7 Facsimile: (562) 256-1006

8 Attorneys for Plaintiff ERIC INGALLS

1 I, Eric Ingalls, declare:

2 1. I am a competent adult and have personal knowledge of the facts set forth in this
3 Declaration. I am submitting this Declaration in support of Plaintiffs' Motion for Preliminary Approval
4 of Class Action and PAGA Settlement, and in support of my requested Class Representative
5 Enhancement Payment of up to \$10,000.00. I have personal knowledge of the facts herein, and if called
6 as a witness I could and would competently testify to them.

7 2. I worked for Defendants MRB Foods Inc., Sanjay Lillaney and Connie Gammon
8 ("Defendants") from approximately November of 2019 to August of 2020 as a non-exempt restaurant
9 crew member employee receiving an hourly wage. I was subjected to Defendants' policies and practices
10 that have been alleged as unlawful in the operative Complaint and the notices sent to the Labor and
11 Workforce Development Agency, including the following: failure to pay minimum wages for all hours
12 worked, failure to pay overtime, meal period violations, rest period violations, wage statement
13 violations, untimely payment of wages, failure to pay final wages, failure to reimburse expenses, unfair
14 competition, failure to provide paid sick leave, failure to keep accurate records and unlawfully
15 collecting or receiving wages in violation of Labor Code section 221.

16 3. I have actively participated in the litigation of this case. I have given a detailed account
17 of all the facts related to my employment and the claims asserted in the Complaint. I provided
18 extensive documentation in support of the claims brought against Defendants including paystubs,
19 Defendants' policies, and other documents related to my work with Defendants and to the claims
20 brought in the class action. I also provided information for witnesses with knowledge relating to the
21 claims in this case. I met with and assisted my attorneys in understanding the documents and providing
22 context for Defendants' wage and hour and payroll policies as they applied to me and how I believed
23 they applied to Defendants' other employees.

24 4. My attorneys explained to me the risks and benefits of bringing a class action and a
25 claim under the Private Attorneys General Act. I understood that I took on the risk, both professionally
26 and financially, in pursuing the case as a class and representative action rather than pursuing my claims
27 individually. I understood that pursuing the case as a class action meant that it would take substantially
28

1 longer than pursuing a claim with the California Labor Commissioner and that I risked getting nothing
2 in the end, but I believed it was important to make sure that Defendants followed the law for everyone.

3 5. I maintained communication with my attorneys throughout the litigation, discussing the
4 facts and policies at issue in the case with my attorneys I asked questions when I needed clarification
5 about various aspects of this case to make sure there were continually steps taken to advance the
6 interests of the class. I also understood that the recovery in this case was for the benefit of my fellow
7 coworkers, not just for me. When my attorneys contacted me asking about more information or
8 documents related to the case, I made myself available and tried to give or obtain any additional
9 information I could. I participated in the negotiations and settlement discussions in this case, including
10 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
11 additional information needed to assist the negotiations, and discussing the potential terms of the
12 Agreement to evaluate its adequacy.

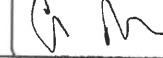
13 6. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
14 Release, discussed the terms with my attorney, and asked my attorneys any questions I had. I believe
15 the settlement terms and allocations are fair and reasonable given the facts of the case.

16 7. As a Class Representative, I took on the risk of having to pay Defendants' costs if we
17 were unsuccessful in bringing our claims.

18 8. I understand that any Class Representative Enhancement Payment I may receive is for
19 my participation as a Class Representative and it is not contingent on my support or approval of the
20 Agreement. I do not believe I have any conflicts with any Class Members, and request that the Court
21 preliminarily approve me to serve as a Class Representative and approve the requested enhancement. .

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23 true and correct. Executed this 16 of December 2021 in Sacramento, California.

24 DocuSigned by:

25 

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27 Eric Ingalls

Galen T. Shimoda (Cal. State Bar No. 226752)
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**SUPERIOR COURT OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO**

ANALISA LEONG-CALL and ERIC
 INGALLS, individually and on behalf of all
 other similarly situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
 SANJAY LILLANEY, an individual;
 CONNIE GAMMON, an individual; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

**DECLARATION OF DAVID YEREMIAN IN
 SUPPORT OF PLAINTIFFS' MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION AND PAGA SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

1 DAVID YEREMIAN & ASSOCIATES, INC.

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8 Attorneys for Plaintiff ERIC INGALLS

1 I, David Yeremian, declare:

2 1. I am an attorney licensed and admitted to practice before all courts of the State of
3 California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of
4 California, and the Ninth Circuit Court of Appeals. I am managing attorney of David Yeremian &
5 Associates, Inc., counsel for Plaintiff Eric Ingalls ("Plaintiff"), on behalf of himself and other similarly
6 situated employees of Defendants MRB Foods Inc., Sanjay Lillaney and Connie Gammon
7 ("Defendants"). I and my firm are referred to herein as Class Counsel, along with United Employees
8 Law Group, PC and co-counsel for our co-Plaintiff, Analisa Leong-Call, in connection with our claims
9 against Defendant MRB Foods Inc.

10 2. All of the matters set forth herein are within my personal knowledge, except those
11 matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I
12 have represented Plaintiff and the employees who are Class Members since the inception of the related
13 class action case entitled *Eric Ingalls v. MRB Foods Inc., MRB Holding Corporation, et al.*,
14 Sacramento County Case No. 34-2020-00289241 ("*Ingalls* action"). I submit this Declaration in
15 support of the Motion for Preliminary Approval of the parties' Joint Stipulation Regarding Class Action
16 and PAGA Settlement and Release ("Settlement Agreement"). A copy of the Settlement Agreement is
17 provided at Exhibit A to this motion.

18 **QUALIFICATIONS AND ADEQUACY OF CLASS COUNSEL**

19 3. My firm is well-qualified because of our experience, knowledge, and resources to act as
20 counsel and represent Plaintiff and the putative class in this action. My practice is exclusively focused
21 on employment matters, with a substantial percentage devoted to litigating wage, hour, and working-
22 conditions violations on a class-wide basis.

23 4. I graduated from UC Berkeley in 1997 and received my law degree and MBA from
24 UCLA in 2001. I am a member of the Los Angeles County Bar Association and the California
25 Employment Lawyers Association. I have been honored as a Super Lawyers Rising Star in 2009, 2010,
26 2012-2015. I have been honored as a Super Lawyer since 2016.

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1 5. I have been practicing law since 2003. Since 2007, I have focused almost exclusively on
2 representing employees, including in wage-and-hour class actions. During my career I have represented
3 employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel (including in the
4 Central, Southern, Eastern and Northern Districts of California), and I have obtained six and seven
5 figure settlements against a range of defendants, including Fortune 500 companies. These cases have
6 involved the gamut of wage-and-hour claims, including claims for failure to pay minimum wages,
7 unpaid wages and overtime, failure to provide meal and rest breaks, failure to reimburse necessary
8 business expenses, inaccurate pay statements, failure to pay timely wages—similar to claims at issue in
9 the present matter.

10 6. I am experienced in prosecuting employment matters, particularly class actions. In
11 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour class-
12 action lawsuits pending in various state and federal jurisdictions throughout California.

13 7. My extensive experience in litigating employment wage and hour matters has been
14 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and generally
15 negotiating fair and reasonable class action settlements. Practice in the narrow field of wage and hour
16 litigation requires skill and knowledge concerning the constantly evolving substantive law (state and
17 federal), as well as the procedural law of class action litigation. In this action, I am fully equipped to use
18 the skills and knowledge I have developed through more than a decade of prosecuting and defending
19 wage and hour class actions to fairly and adequately represent the interests of the Class. Therefore, on
20 the account of my resources, experience, and knowledge, I am well-qualified to act as class counsel and
21 represent Plaintiff and the putative class members in this action.

22 8. In the last several years I have had several contested class cases certified. When
23 necessary we pursue cases on appeal. Based on my experience, I am well-qualified to evaluate the class
24 claims in this action, and to evaluate settlement v. trial and defenses raised. I have negotiated over 100
25 class action settlements, including many involving the same issues presented in this case. A selection of
26 cases wherein I have served as lead or co-lead class counsel includes: *Galavis v. Patina Restaurant*
27 *Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel); *Milford v. ADT Security*
28 *Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead counsel); *Carreon v. Wolfgang Puck*

1 *Catering and Events, LLC* (LASC BC398569; class size approx. 1,400; lead counsel); *Fluke v. RFG Oil,*
2 *Inc.* (LASC BC403354; class size approx. 1,400; lead counsel); *Urena v. Camachos Restaurant* (LASC
3 BC365913; class size approx. 887; lead counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC
4 BC391187; class size approx. 860; lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size
5 approx. 600; lead counsel); *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size
6 approx. 600; lead counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size
7 approx. 300; lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250;
8 lead counsel); *Utley v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead
9 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead counsel);
10 *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead counsel); *Morris v.*
11 *Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel); *Ortega v. AJC Sandblasting,*
12 *Inc.* (LASC BC378806; class size approx. 140; lead counsel); *Lulejyan v. Jim Falk Motors of Beverly*
13 *Hills, Inc.* (LASC BC398459; class size approx. 72; lead counsel); *Rylko v. The Griddle Café, Inc.*
14 (LASC BC386126; class size approx. 70; lead counsel); *Healy v. Siemens IT Solutions and Services, Inc.*
15 (Santa Clara Superior Court 108CV113479; class size approx. 60; lead counsel).

16 9. The parties to this action have recently stipulated and agreed to entry of a Second
17 Amended Complaint consolidating the *Ingalls* action with this one as the lead case, and adding Plaintiff
18 Ingalls as a named Plaintiff and putative Class Representative in this action along with Ms. Leong-Call.
19 The Settlement Agreement defines the Class as: “current and former non-exempt employees of
20 Defendants in California during the Class Period,” which is October 5, 2019 to November 6, 2021. I do
21 not believe that I have any conflicts of interest with the Class or with the Class Representatives. I am not
22 related to the Class Representatives. I have not previously represented Defendant in any matter. I
23 respectfully submit that I and David Yeremian & Associates, Inc. and Walter Haines and United
24 Employees Law Group, PC, along with our co-counsel for Plaintiff Leong-Call, are well suited to act as
25 Class Counsel in this action, and we have and will continue to vigorously represent the interests of the
26 Class.

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PROCEDURAL HISTORY AND BACKGROUND

10. Defendant MRB Foods, Inc. operates several Burger King restaurants as a franchisee. Plaintiff Ingalls worked for Defendants as a non-exempt, hourly restaurant crew member from approximately November of 2019 to August of 2020.

11. On November 19, 2020, Plaintiff Ingalls filed his putative Class Action Complaint against Defendants alleging nine wage and hour causes of action. Plaintiff Ingalls then filed a First Amended Complaint on June 14, 2021 to add a PAGA cause of action based on the violations alleged in his October 5, 2020 notice to the LWDA.

12. The parties to the Ingalls action completed their initial Case Management Conference on June 25, 2021, and the parties' counsel conferred in advance along with counsel for Leong-Call. We then informed the Ingalls Court of the parties' agreement to complete a joint mediation with the Leong-Call plaintiff that was scheduled, and the Court set a post-mediation conference.

13. The parties through counsel entered into a Joint Prosecution Agreement and completed mediation with Tripper Ortman on September 7, 2021. Through informal discovery prior to mediation, Defendants and Defendants' Counsel provided Class Counsel with copies of all applicable versions of its policies and procedures, employee handbook, information on Class Members including, but not limited to, Class Members' dates of employment, job titles, restaurant location they worked at, total number of Class Members, as well as timecard data and paystubs for a randomly selected sample of Class Members. This information allowed Plaintiffs' counsel to assess liability and create an accurate damages model. Plaintiffs assisted in all aspects of this litigation including providing factual information relating to Plaintiffs' and similarly situated employees' employment conditions, providing witness information, providing a substantial number of documents, and answering questions regarding Defendants' factual contentions in this matter.

14. At mediation, the parties were able to agree to a global settlement and executed a Memorandum of Understanding setting forth the general terms for settling both cases. The parties then worked to complete and execute their Settlement Agreement, which they now ask the Court to preliminarily approve. Pursuant to their Settlement, the parties agreed to stipulate to add Plaintiff Ingalls as a named Plaintiff in this action to create a consolidated Complaint. When the motion for preliminary

1 approval is pending before this honorable Court, Plaintiff Ingalls and Defendant will stipulate to and
2 request dismissal of the *Ingalls* action without prejudice.

3 **THE SETTLEMENT IS FAIR AND REASONABLE AND WORTHY OF APPROVAL**

4 15. After taking into consideration the risks and expenses posed by further litigation and, in
5 the class-action context, the risk of decertification, Class Counsel and the parties believe the Settlement
6 is fair and reasonable and worthy of preliminary approval. Further litigation of this case posed risks of
7 unfavorable rulings on the merits of the various indeterminate legal issues, and the parties disputed the
8 effect of these and other issues on decertification.

9 16. It is also always preferable to reach a relatively early resolution of a dispute that saves
10 time and money that would otherwise go towards continuing contested litigation and trial. If this case
11 ended up settling after further litigation, the settlement amount would have to account for the additional
12 costs incurred, and there likely would be less amounts available for Class members when a settlement
13 was finalized. The parties were also aware that a class action trial would be a complicated and expensive
14 proceeding, as well as the likelihood of a long, drawn-out appeal process. The settlement provides real
15 and tangible benefits for Class members in the immediate future. The benefits of this Settlement are not
16 insignificant for anyone, especially given the current economic climate. Consequently, the risk and
17 expense of further litigation outweighed the potential benefit that might have otherwise been gained.

18 17. This analysis compels a conclusion that the settlement is fair, reasonable, and adequate.
19 Class Counsel conducted a thorough investigation of the subject wage-and-hour practices and engaged
20 in non-collusive, arm's-length negotiations in order to reach a settlement. Defendant has agreed to pay
21 fair value to settle Plaintiff's claims given the existence of legal uncertainty. From Class Counsel's
22 substantial experience with wage-and-hour class action lawsuits, Class Counsel believes that this case
23 could not have settled on better terms under the circumstances. Request therefore is made that the
24 Settlement be granted preliminary approval so that those persons whom it was intended to benefit will
25 be afforded the opportunity to determine its adequacy for themselves. Our co-counsel, Justin Rodriguez,
26 provides further details of the parties' settlement negotiations and the numbers and alleged violation
27 rates we used for mediation and the discovery we completed prior to it.
28

REQUEST FOR ATTORNEYS' FEES AND COSTS

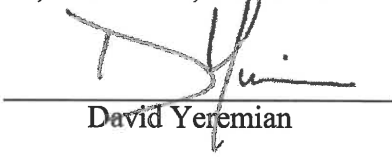
18. Under the Settlement, Class Counsel also requests, without opposition from Defendants, an award of attorneys' fees and costs and expenses incurred in connection with the prosecution of this action, and all of the work remaining to be performed by Class Counsel in documenting the Settlement, securing Court approval of the Settlement, carrying out their duties to see that the Settlement is fairly administered and implemented, and obtaining dismissal of the Lawsuit, as the Attorneys' Fees payment in an amount not to exceed 35% of the Gross Settlement Amount of \$200,000.00 (i.e. up to \$70,000.00), and for an award of reasonable costs and expenses in an amount not to exceed \$22,000.00, subject to approval by the Court. Through the date of filing of this motion, David Yermian & Associates, Inc. has incurred approximately \$8,129.17 in litigation costs. Attached as Exhibit E to this motion is a true and correct copy of the costs my firm has incurred prior to the filing of this motion and the expected costs through final approval and the fairness hearing. Any amounts not approved by the Court as Attorneys' Fees and Costs will be distributed to the Class Members who do not opt-out.

19. This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to class members, communicating with class members regarding their claims, and assisting in the administration of the settlement if it is preliminarily approved.

20. My firm took this case on a contingent-fee basis against a business represented by a reputable defense firm. When we take contingent cases, we must pay careful attention to the economics involved or one bad case can destroy years of work. Even when we work long hours, the number of hours in a day is limited. Because of this, when we take on one particular matter, we are unable to take on all of the other matters we would otherwise be able to undertake. When Class Counsel became involved in this case, we realized the time commitment that it would entail and we were forced to turn down matters that we otherwise should have been able to handle. In sum, this case claimed a significant portion of Class Counsel's time and attention throughout its pendency.

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

3 Executed this 8th day of December 2021, at Glendale, California.

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6 David Yeremian
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Attorneys for Plaintiff ANALISA LEONG-CALL

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ANALISA LEONG-CALL and ERIC
 INGALLS, individually and on behalf of all
 other similarly situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
 SANJAY LILLANEY, an individual;
 CONNIE GAMMON, an individual; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

**DECLARATION OF ALVIN B. LINDSAY IN
 SUPPORT OF PLAINTIFFS' MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION AND PAGA SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

1 DAVID YEREMIAN & ASSOCIATES, INC.

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12 Telephone: (562) 256-1047

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14 Attorneys for Plaintiff ERIC INGALLS

1 I, Alvin B. Lindsay, declare:

2 1. I am an attorney licensed and admitted to practice before all courts of the State of
3 California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of
4 California, and the Ninth Circuit Court of Appeals. I am senior counsel with David Yeremian &
5 Associates, Inc., counsel for Plaintiff Eric Ingalls ("Plaintiff"), on behalf of himself and other similarly
6 situated employees of Defendants MRB Foods Inc., Sanjay Lillaney and Connie Gammon
7 ("Defendants"). I and my firm are referred to herein as Class Counsel, along with United Employees
8 Law Group, PC and co-counsel for our co-Plaintiff, Analisa Leong-Call, Shimoda Law Corp., in
9 connection with our claims against Defendant MRB Foods Inc.

10 2. All of the matters set forth herein are within my personal knowledge, except those
11 matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I
12 have represented Plaintiff and the employees who are Class Members since the inception of the related
13 class action case entitled *Eric Ingalls v. MRB Foods Inc., MRB Holding Corporation, et al.*,
14 Sacramento County Case No. 34-2020-00289241 ("*Ingalls* action"). As further addressed in the
15 concurrently filed Declaration of David Yeremian, the parties have recently stipulated and agreed to
16 entry of a Second Amended Complaint consolidating the *Ingalls* action with this one as the lead case,
17 and adding Plaintiff Ingalls as a named Plaintiff and putative Class Representative in this action along
18 with Ms. Leong-Call. I submit this Declaration in support of the Motion for Preliminary Approval of
19 the parties' Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Settlement
20 Agreement"). A copy of the Settlement Agreement is provided at Exhibit A to this motion.

21 **QUALIFICATIONS AND ADEQUACY OF CLASS COUNSEL**

22 3. I have litigated complex civil actions for eighteen years, focusing on intellectual property
23 litigation and employment wage and hour class actions. I have the requisite knowledge of class and
24 representative proceedings, applicable class action and employment law, and federal and state court
25 procedures, to represent Plaintiff and the putative Class and Subclasses in the action. For the past ten
26 years, I have primarily focused my practice on litigating complex California wage and hour class
27 actions, first with the firm of James Hawkins, APLC, then with Quintilone & Associates, and now with
28 David Yeremian & Associates, Inc. In the course of representing class plaintiffs, I have litigated and

1 settled hundreds of class actions in California state and federal courts on behalf of hundreds of
2 thousands of employees.

3 4. I graduated from Whittier Law School, and have been practicing in California for over 18
4 years. I was Executive Editor of the Whittier Law Review, was a Scribes Award winner, and served as a
5 judicial extern to the Honorable David G. Sills, presiding justice of the California Court of Appeal, 4th
6 District, Division 3. During my second year in law school, I began clerking full time for the well-
7 respected intellectual property boutique firm, Fulwider Patton, in Los Angeles, California. When I
8 graduated, I became an attorney with the firm and served there for five years, and was active in the Inns
9 of Court. My practice focused on intellectual property prosecution and litigation, and I spent the
10 majority of my time representing clients in patent infringement litigation. I also served in a similar
11 capacity for the San Francisco firm, King & Kelleher, for three years, and appeared predominantly in the
12 Central and Northern District of California Courts prosecuting and defending patent infringement
13 actions.

14 5. Prior to attending law school, I graduated from the United States Military Academy at
15 West Point. I then served as an Army Officer for 10 years in the Corps of Engineers, in various stateside
16 and overseas postings. I was a combat engineer company commander, was stationed in Germany when
17 the Berlin Wall fell, and am a veteran of Operation Desert Shield/Desert Storm. I also served in the
18 Reserves and advanced to the rank of Major.

19 6. Since 2010, I have been the senior attorney responsible for the day to day litigation of
20 well over 100 wage and hour class and representative actions on behalf of employee class members and
21 aggrieved employees. I have had numerous contested class action cases certified, and have secured
22 settlements for many millions of dollars for our clients. I am experienced and qualified to evaluate the
23 class and representative claims, to evaluate settlement versus trial on a fully informed basis and to
24 evaluate the viability of the defenses. I enjoy being an attorney, and especially being a complex civil
25 litigator focusing on class and representative action proceedings. I value the fact that what we do is a
26 profession, and I value the professional relationships I have developed with my fellow plaintiffs'
27 counsel and the attorneys from the well-respected corporate defense firms we litigate against on a daily
28 basis.

1 7. David Yeremian & Associates, Inc. is well-qualified and has ample experience,
2 knowledge, and resources to act as counsel and represent Plaintiffs and the putative Class members and
3 aggrieved employees in this action. Our practice is exclusively focused on employment matters, with the
4 majority of focus being devoted to litigating wage, hour, and working-conditions violations on a class-
5 wide basis. Further background on our firm is addressed in the Yeremian Declaration.

6 8. My participation in wage and hour class and representative action litigations in California
7 has included extensive preparation, development of a thorough knowledge of the legal issues related to
8 certification and liability, and full immersion and participation in the mediation and negotiation process.
9 I am therefore experienced in the type of class and representative action litigation involving violations of
10 California's wage and hour laws which are the subject of this action. To that end, for example, I was
11 asked by the California Employment Lawyers Association to draft an amicus brief, which contributed to
12 the California Supreme Court's decision in *Alvarado v Dart Container Corp. of California*, 4 Cal. 5th
13 542 (2018).

14 9. The following are examples of some of my cases which have resulted in class
15 certification and favorable settlements for the employee class members and aggrieved employees I have
16 represented:

- 17 a. *Batres v. HMS Host USA, Inc. et al.*, CD Cal Case No. SACV 10-01458 CJC (AJWx) (Hon.
18 Cormac J. Carney);
- 19 b. *Barrera v Sodexo, Inc.*, CD Cal Case No. SACV 13-0817 AG (MANx) (Hon. Andrew J.
20 Guilford);
- 21 c. *Mojica v Compass Group, et al.*, CD Cal Case No. 8:13-cv-01754 DSF (AGR) (Hon. Dale S.
22 Fischer);
- 23 d. *Aguilar v 7-Eleven*, Orange County Superior Court, Case No. 30-2009-00268714-CU-OE-
24 CXC (Hon. Kim G. Dunning);
- 25 e. *Pedro M. Guerrero v. E-Recycling of California*, Orange County Superior Court Case No.
26 30-2012-00552453-CU-OE-CXC (Hon. Gail A. Andler);
- 27 f. *Virginia Rodriguez v Exel Inc.*, San Bernardino County Superior Court, Case No. CIVDS
28 1104594 (Hon. Bryan F. Foster);

- 1 g. *Palacios v LKQ Lakenor Auto & Truck Salvage, Inc., et al.*, Orange County Superior Court,
2 Case No. 30-2012-00552979-CU-OE-CXC (Hon. Steven L. Perk);
- 3 h. *Ayala et al. v Park Anaheim Health Care, LLC*, Orange County Superior Court, Case No. 30-
4 2013-00649442-CU-OE-CXC (Hon. Gail A. Andler);
- 5 i. *Daniel v Xerxes Corporation*, Orange County Superior Court, Case No. 30-2010-00418048-
6 CU-OE-CXC (Hon. Gail A. Andler);
- 7 j. *Magana v HVM L.L.C. et al.*, Orange County Superior Court Case No. 30-2011-00468712-
8 CU-OE-CXC (Hon. Gail A. Andler);
- 9 k. *Vo v Express Manufacturing, Inc.*, Orange County Case No. 30-2012-00552641-CU-OE-
10 CXC (Hon. Gail A. Andler);
- 11 l. *Yac v Paper Source Converting & Manufacturing*, Los Angeles Superior Court, Case No. BC
12 472113 (Hon. Michael L. Stern);
- 13 m. *Bui v Sprint Corporation*, ED Cal Case No. 2:14-CV-02461-TLN-AC (Hon. Troy L. Nunley);
- 14 n. *Munoz v Stine CC Inc (Chevron)*, (Hon. Lorna H. Brumfield), Kern County Superior Court,
15 S-1500-CV-283104-LHB;
- 16 o. *Alcaraz v County of San Bernardino*, San Bernardino County Superior Court, Case No.
17 CIVDS 1013508 (Hon. John M. Pacheco);
- 18 p. *Andrews v Stoneledge Furniture, LLC*, San Bernardino County Superior Court, Case No.
19 CIVDS 1706865 (Hon. David Cohn);
- 20 q. *Burson v Best Western All Suite, LLC*, Santa Cruz County Superior Court, Case No.
21 CV179684 (Hon. Paul M. Marigonda);
- 22 r. *Fernandez v Comforcare Senior Services, et al.*, San Diego County Superior Court, Case No.
23 37-2015-00032396-CU-OE-CTL (Hon. Gregory W. Pollack);
- 24 s. *Quiroz, Haslett v SWH Corporation, dba Mimi's Café*, Orange County Superior Court, Case
25 No. 30-2011-00493645-CU-OE-CXC (Hon. William Claster);
- 26 t. *Wells Fargo Bank Wage and Hour Cases*, Los Angeles County Superior Court, Case No.
27 JCCP No. 4702 (Hon. Kenneth R. Freeman);
- 28

- 1 u. *Loeza v JP Morgan Chase Bank NA*, SD Cal. Case No. 13-cv-00095-L-BGS (Hon. M. James
2 Lorenz);
- 3 v. *Cunningham v Leslie's Poolmart, Inc.*, CD Cal. Case NO. 13-cv-02122-CAS-CWx (Hon.
4 Christina A. Synder);
- 5 w. *Perez et al v. Irvine Capital Restaurant dba Capital Seafood Restaurant*, Orange County
6 Superior Court, Case No. 30-2016-00834023-CU-OE-CXC (Hon. Thierry Patrick Colaw);
- 7 x. *Robarge et al. v DCOR, LLC*, Los Angeles County Superior Court, Case No. BC630278 (Hon.
8 Kenneth R. Freeman);
- 9 y. *Rubio v Sprint Corporation*, CD Cal. Case No. 2:17-cv-02231-SVW-GJS, (Hon. Stephen V.
10 Wilson);
- 11 z. *Tapia v Sterling Jewelers Inc.*, ND Cal. Case No. 5:14-cv-00624-EJD (Hon. Edward J.
12 Davila);
- 13 aa. *Thompson v The Standard Hotel*, Los Angeles County Superior Court, Case No. BC597152
14 (Hon. Kenneth R. Freeman);
- 15 bb. *Ward v. JetSuite, Inc. et al.*, CD Cal. Case No. 8:16-cv-00584-AG-AS (Hon. Andrew J.
16 Guilford).
- 17 cc. *Rowser v. Trunk Club, Inc.*, CD Cal. Case No. 2:17-cv-05064-DSF-RAO (Hon. Dale S.
18 Fischer);
- 19 dd. *Rodriguez v PD Products, Inc.*, Los Angeles County Superior Court, Case No. BC696710
20 (Hon. Mauren E. Nelson).
- 21 ee. *Basiliali v Allegiant Air, LLC*, CD Cal. Case No. 2:18-cv-3888 RGK (MRWx) (Hon. R. Gary
22 Klausner);
- 23 ff. *Hernandez v Fedex Ground Package System, Inc.*, ND Cal. Case No. 3:17-cv-02074-VC
24 (Hon. Vince G. Chhabria);
- 25 gg. *Savinovich v Starbucks Corporation, Evolution Fresh, Inc. et al.*, Santa Cruz County Superior
26 Court, Case No. 17CV02050 (Hon. Paul Burdick);
- 27 hh. *Verdugo v Denali Water Solutions, LLC*, CD Cal Case No. 5:18-cv-00170-ODW (SHK)
28 (Hon. Otis D. Wright II);

- ii. *Zepeda v MasTec Network Solutions, LLC, et al.*, CD Cal. Case No. 5:18-cv-00749-VAP-SHK (Hon. Virginia A. Phillips);
- jj. *Sanchez v Pacific Southwest Container, Inc.*, Stanislaus County Superior Court, Case No. 2028679 (Hon. Marie Sovey Silveira);
- kk. *Danelian v Medix Staffing Solutions, Inc. and City of Hope National Medical Center*, Los Angeles County Superior Court, Case No. BC649846 (Hon. Kenneth R. Freeman);
- ll. *Sanchez v AM Retail Group*, ND Cal. Case No. 3:18-cv-00287-JCS (Hon. Joseph C. Spero);
- mm. *Orr v PetVet Care Centers (California), Inc. et al.*, Santa Clara County Case No. 19CV354063 (Hon. Patricia M. Lucas);
- nn. *Williams, Baldwin v Staff Pro, Inc.*, Orange County Superior Court, Case No. 30-2016-00890905-CU-OE-CXC (Hon. Randall J. Sherman);
- oo. *Rangel v W.W. Grainger, Inc.*, Stanislaus County Superior Court, Case No. CV-18-0030341 (Hon. John D. Freeland);
- pp. *Cardiel v MillerCoors LLC*, Los Angeles County Superior Court, Case No. 19STCV02979 (Hon. Rupert A. Byrdsong);
- qq. *California Forensic Medical Group Wage and Hour Cases*, JCCP4999, Monterey County Superior Court (Hon. Lydia M. Villarreal);
- rr. *Cervantes v RGW Construction, Inc.*, Alameda County Superior Court, Case No. RG16826895 (Hon. Stephen Pulido);
- ss. *Cooks v Reliant Real Estate Management, Inc.*, Los Angeles County Superior Court, Case No. 18STCV05531 (Hon. Amy D. Hogue);
- tt. *Ornelas v National Storage Affiliates Trust, et al.*, San Francisco County Superior Court, Case No. CGC-18-571421 (Hon. Curtis E.A. Karnow);
- uu. *Jiminez, Carrera v Lancaster Burns Construction, Inc.*, Sonoma County Superior Court Case No. SCV-265708 (Hon. Patrick Broderick).

10. The above matters are not exhaustive, but provide samples of the types of class and representative action litigations I have successfully resolved. David Yeremian & Associates, Inc. is presently prosecuting approximately 100 class and representative action litigations in state and federal

1 courts across California, including multiple other cases throughout Northern California. We also have
2 several actions that are in the stages of preliminary and final approval in Courts throughout the state.

3 11. My experience in litigating employment wage and hour matters has been integral in
4 identifying legal issues, evaluating the strengths and weaknesses of a case, and generally negotiating fair
5 and reasonable class and representative action settlements. Practice in the narrow field of wage and hour
6 litigation requires skill and knowledge concerning the constantly evolving substantive law (state and
7 federal), as well as the procedural law of class and representative action litigation. In this action, I am
8 fully equipped to use the skills and knowledge I have developed through a decade of prosecuting and
9 defending wage and hour class actions to fairly and adequately represent the interests of the Class and
10 aggrieved employees. Therefore, based on my resources, experience, and knowledge, I am well-
11 qualified to act as class counsel and represent the Plaintiff and the putative class members and aggrieved
12 employees in this action.

13 12. As a result of my prior experience as class counsel in other wage and hour class and
14 representative actions, I am fully aware of the responsibilities I would owe as counsel to the Settlement
15 Class Members and aggrieved employees I represent. I have thoroughly investigated the claims asserted
16 in this action, and I and our firm have remained committed to dedicating the resources necessary to
17 represent the Settlement Class and vigorously pursue their claims. Based upon my experience and
18 understanding of the claims and defenses in this action, I believe the settlement is fair, adequate and
19 reasonable for the Class members and aggrieved employees and all involved, and that the Settlement is
20 well within the range of reasonableness that would permit it to be finally approved. I am not aware of
21 any conflict of interest between myself and Plaintiff or any other Class member that would interfere with
22 my duties as Class Counsel or impede my representation.

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

25 Executed this 7th day of December 2021, at Glendale, California.

26 

27 Alvin B. Lindsay
28

Galen T. Shimoda (Cal. State Bar No. 226752)
 Justin P. Rodriguez (Cal. State Bar No. 278275)
 Brittany V. Berzin (Cal. State Bar No. 325121)
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Attorneys for Plaintiff ANALISA LEONG-CALL

Caption continued on next page

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ANALISA LEONG-CALL and ERIC
 INGALLS, individually and on behalf of all
 other similarly situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
 SANJAY LILLANEY, an individual;
 CONNIE GAMMON, an individual; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

**DECLARATION OF WALTER L. HAINES
 IN SUPPORT OF PLAINTIFFS' MOTION
 FOR PRELIMINARY APPROVAL OF
 CLASS ACTION AND PAGA SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

1 DAVID YEREMIAN & ASSOCIATES, INC.

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Walter Haines (SBN 71075)

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Huntington Beach, CA 92649

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Attorneys for Plaintiff ERIC INGALLS

1 I, Walter L. Haines, declare:

2 1. I am counsel of record for Plaintiff Eric Ingalls ("Plaintiff"), on behalf of himself and
3 other similarly situated employees of Defendants MRB Foods Inc., Sanjay Lillaney and Connie
4 Gammon ("Defendants"), along with my co-counsel at David Yeremian and Associates, Inc. I am a
5 member in good standing of the State Bar of California. I submit this Declaration in support of the
6 Motion for Preliminary Approval of the parties' Joint Stipulation Regarding Class Action and PAGA
7 Settlement and Release ("Settlement Agreement"). I make this Declaration in support of Plaintiffs'
8 Motion for Preliminary Approval of Class Action and PAGA Settlement, and do so based on my
9 personal knowledge. If called to testify, I could and would competently testify to the matters contained
10 in this Declaration.

11 2. The Settlement Agreement in this action is the result of vigorous and competent
12 representation of Plaintiff and arms'-length, contentious negotiations with Defendants to reach the best
13 possible outcome for the Class Members. Based on my experience as Class Counsel and my knowledge
14 of the discovery, investigations, and negotiations in this case, I believe that the proposed Settlement is
15 fair, reasonable, and adequate for the Class.

16 3. I have been practicing law for over 40 years and I am highly experienced in actions of
17 this nature. I am the most senior attorney in my firm, United Employees Law Group, PC and worked on
18 the litigation of this matter. I formed United Employees Law Group, PC in 2005, primarily to represent
19 employees in their wage claims. I have represented over 1,500 clients in wage and hour disputes of
20 which more than 300 cases were class actions with settlements totaling over \$400,000,000. These class
21 action cases include Fortune 500 companies such as Pepsi, Intel, Home Depot, Kaiser, Wells Fargo,
22 Bank of America, Cisco Systems, First American Title Co., Yahoo!, WellPoint, Inc., Sun
23 Microsystems, and Kaiser Foundation Hospitals.

24 4. United Employees Law Group, PC has prosecuted this litigation solely on a contingent-
25 fee basis, and has been completely at risk that it would not receive any compensation for prosecuting
26 claims against the Defendants.

27 5. United Employees Law Group, PC has participated in this litigation and has performed
28 work on behalf of Plaintiff Ingalls since the inception of this litigation.

6. I performed, among other things, the following general tasks related to this matter: analyzed initial client's claims; performed initial investigation inclusive of research necessary for case evaluation and searched court records relative to possible competing cases; reviewed all settlement papers along with orders from the court, law and motion papers; participated in the mediation; and assisted with client liaison and other tasks assigned by lead counsel.

7. I have no conflicts of interest with the class or with the class representatives. I am not related to the representative Plaintiffs. I have not previously represented Defendants in any matter. I do not represent opposing factions within the class in that all claims are predicated upon the same theories of liability and benefit all class members equally.

8. In sum, I am well-suited to act as Class Counsel and will continue to vigorously represent the interests of the class.

9. Through the date of filing this motion United Employees Law Group, PC has incurred approximately \$4.00 in litigation costs. Attached as Exhibit E to this motion is a true and correct copy of the costs my firm has incurred prior to the filing of this motion and the expected costs through final approval and the fairness hearing.

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

Executed this 21st day of December 2021, at Los Angeles, California.


Walter L. Haines

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
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5 Attorneys for Plaintiff ANALISA LEONG-CALL

6 *Caption continued on next page*

8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SACRAMENTO**

10
11 ANALISA LEONG-CALL and ERIC
12 INGALLS, individually and on behalf of all
other similarly situated employees,

13 Plaintiffs,

14 vs.

15
16 MRB FOODS INC., a California Corporation;
SANJAY LILLANEY, an individual;
17 CONNIE GAMMON, an individual; and
DOES 1 to 100, inclusive,

18 Defendants.
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Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

1 DAVID YEREMIAN & ASSOCIATES, INC.

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8 Attorneys for Plaintiff ERIC INGALLS

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on February 10, 2022 at 9:00 a.m., in Department 54
4 before Hon. Christopher E. Krueger, presiding. Named Plaintiff Analisa Leong-Call filed this putative
5 class action on October 14, 2020. The operative Complaint filed on November 8, 2021 to include
6 named Plaintiff Eric Ingalls alleges that Defendants MRB Foods Inc., Sanjay Lillaney and Connie
7 Gammon ("Defendants") are liable for failure to pay minimum wages and for all hours worked, failure
8 to pay overtime, meal period violations, rest period violations, wage statement violations, untimely
9 payment of wages, failure to pay final wages, failure to reimburse expenses, unfair competition, and
10 failure to pay accrued vacation. Plaintiffs have also alleged Defendants are liable for a civil penalties
11 under the Private Attorneys General Act ("PAGA") based on these violations and failure to provide
12 paid sick leave, failure to keep accurate records and unlawfully collecting or receiving wages in
13 violation of Labor Code section 221. Plaintiffs sought attorneys' fees and costs as part of this Action.
14 Defendants denied all of Plaintiffs' claims and denied that this case was appropriate for class
15 treatment. No class has been certified.

16 The parties have agreed to settle the class and PAGA claims. Defendants will provide
17 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
18 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
19 Release ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
20 Agreement. The Court, having received and considered Plaintiffs' Motion for Preliminary Approval of
21 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
22 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
23 FOLLOWS:

24 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
25 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

26 The Court finds that certification of the following class for settlement purposes only is
27 appropriate under the California Code of Civil Procedure and related case law:
28

1 Current and former non-exempt employees of Defendants in California
2 from October 5, 2019 up to November 6, 2021.

3 The Court recognizes that the foregoing definition is for Class Member identification purposes
4 only and is not intended to capture the claims at issue or limit or alter the released claims under the
5 Agreement.

6 The Court finds that Class Members meet the ascertainability and numerosity requirements since
7 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
8 the definition and the number of Class Members would make joinder impractical. The commonality and
9 predominance requirements are met for settlement purposes since there are questions of law and fact
10 common to Class Members. The common questions of law or fact in this case all stem from Plaintiffs'
11 contentions that Defendants caused the violations outlined above by 1) failing to incorporate the value of
12 nondiscretionary bonuses into putative class members' regular rates of pay for the purpose of calculating
13 overtime wages and paid sick time; 2) failing to pay putative class members for all hours worked,
14 including overtime hours (requiring off the clock work pre and post shift and requiring clock outs for
15 meal periods not taken); 3) contacting putative class members on their personal cellphones during shifts
16 and failing to reimburse for cellphone use; 4) requiring putative class members to use their personal
17 vehicles to drive to other restaurants and make bank deposits and failing to reimburse mileage; 5) failing
18 to authorize and permit all meal and rest periods (missed lunches, late lunches, and no second lunch for
19 shifts over 10 hours); and 6) failing to pay accrued but unused vacation wages upon separation. The
20 PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from
21 these violations. Additionally, Class Members seek the same remedies under state law. The typicality
22 requirement for settlement purposes is also satisfied since the claims of the Class Representatives are
23 based on the same facts and legal theories as those applicable to the class members.

24 The Court also finds that preliminarily and conditionally certifying the settlement class is
25 required to avoid each Class Member from litigating similar claims individually. This settlement will
26 achieve economies of scale for Class Members with relatively small individual claims and conserve the
27 resources of the judicial system.

28 The Court finds that Plaintiffs Analisa Leong-Call and Eric Ingalls and Plaintiffs' counsel, Galen
T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of the Shimoda Law Corp., David Yeremian

1 and Alvin B. Lindsay of David Yeremian and Associates, Inc., and Walter Haines of United Employees
2 Law Group PC to be adequate representatives of the settlement class. The Court appoints them as class
3 representative and class counsel, respectively.

4 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

5 The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit
6 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of
7 a settlement, which could ultimately be given final approval by this Court. The Court also
8 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this
9 Court or opt-out of being bound by the preliminarily approved Agreement.

10 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
11 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
12 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
13 \$200,000 Gross Settlement Amount.

14 The Court orders that Plaintiffs Analisa Leong-Call and Eric Ingalls will receive \$10,000 each as
15 a Class Representative Enhancement Payment in addition to any amount Plaintiffs may be entitled to
16 under the Agreement's pro rata distribution formula for Plaintiffs' time and effort on behalf of Class
17 Members.

18 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
19 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
20 \$15,000. Any difference between the actual cost of the Claims Administrator and the approved payment
21 will be redistributed to Qualified Claimants on a pro-rata basis.

22 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
23 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
24 accurately traced as set forth in the Agreement, Plaintiffs and Class Counsel were able to negotiate on
25 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
26 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
27 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
28 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of

1 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.* \$70,000, to be appropriate compensation
2 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
3 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
4 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
5 the course of this case, which included potential loss at summary judgment, certification, and/or trial
6 proceedings. Additionally, the Court orders that up to \$22,000 of the settlement proceeds will be paid to
7 Class Counsel for reasonable costs incurred in this case. Any difference between the actual costs
8 incurred and the \$22,000 shall be paid to the Qualified Claimants on a pro-rata basis.

9 The Court approves of the Ten Thousand Dollars and No Cents (\$10,000) PAGA Payment,
10 which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount,
11 to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to
12 the Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid
13 to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also finds that the
14 Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-
15 compliance, furthering the purpose of the Labor Code and LWDA.

16 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
17 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
18 paid out 50/50 to Capital Pro Bono, Inc. and the Center For Workers' Rights.

19 The releases and waivers for Class Members who do not opt out of being bound by the
20 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representatives are also
21 approved by the Court as set forth in the Agreement.

22 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
23 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

24 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiffs'
25 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
26 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
27 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
28 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness

1 hearing to be conducted on the date set forth below. The Court further finds that the Notice of
2 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
3 at his or her most recent address based on a National Change of Address database search from the Class
4 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
5 returned as "undeliverable" or "not at this address" comports with all constitutional requirements,
6 including those of due process.

7 The Court also finds that because there is a strong interest in providing Class Members the
8 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
9 privacy rights, the sharing of employment information, including social security numbers, is not a
10 serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last
11 name, last known mailing address, social security number, hire and termination dates, total number of
12 workweeks during which the Class Member performed any actual work to the Claims Administrator
13 only, and not to Plaintiffs or Class Counsel, in order to process this settlement as contemplated within
14 the Agreement and approved by this Order. The Claims Administrator shall only use this information
15 for settlement purposes identified herein, and this information shall be kept confidential, not be shared
16 with any third-party, and used only to administer the settlement.

17 **4. IMPLEMENTATION SCHEDULE**

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

20 21 22 23 24 25 26 27 28	<table><tr><td>Last day for Defendants to provide Claims Administrator with Class Member information</td><td>Within 14 calendar days after the Preliminary Approval Date</td></tr><tr><td>Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement</td><td>Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants</td></tr><tr><td>Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests</td><td>45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later</td></tr></table>	Last day for Defendants to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date	Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Defendants to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date						
Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants						
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later						

Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 days after the Final Approval Date
Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days of the settlement being funded
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiffs' Motion and sets final approval hearing on the proposed date of June 3, 2022 at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

1 If for any reason the Court does not grant final approval of the Agreement, all evidence and
2 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
3 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
4 purpose other than approving a settlement class. The parties will revert to their respective positions as if
5 no settlement had been reached at all.

6 **IT IS SO ORDERED.**

7
8 Date: _____

By: _____
Judge of the Superior Court

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
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5 Attorneys for Plaintiff ANALISA LEONG-CALL

6 *Caption continued on next page*

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 ANALISA LEONG-CALL and ERIC
12 INGALLS, individually and on behalf of all
other similarly situated employees,

13 Plaintiffs,

14 vs.

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16 MRB FOODS INC., a California Corporation;
SANJAY LILLANEY, an individual;
17 CONNIE GAMMON, an individual; and
18 DOES 1 to 100, inclusive,

19 Defendants.
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Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

PROOF OF SERVICE

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

1 DAVID YEREMIAN & ASSOCIATES, INC.
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8 Attorneys for Plaintiff ERIC INGALLS
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1 *Leong-Call v. MRB Foods, Inc.*
2 *Sacramento County Superior Court of California 34-2020-00287486*

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

5 I, Erika F. Collazo, declare that:

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

8 On December 23, 2021, I served the following documents on the party below:

- 9 • Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class
- 10 • Action and PAGA Settlement
- 11 • Memorandum of Points and Authorities in Support of Plaintiff's Motion
- 12 • for Preliminary Approval of Class Action and PAGA Settlement
- 13 • Exhibit List and Exhibits in Support of Plaintiff's Motion for Preliminary
- 14 • Approval of Class Action and PAGA Settlement
- 15 • Declaration of Justin P. Rodriguez in Support of Plaintiff's Motion for
- 16 • Preliminary Approval of Class Action and PAGA Settlement
- 17 • Declaration of Analisa Leong-Call in Support of Plaintiff's Motion for
- 18 • Preliminary Approval of Class Action and PAGA Settlement
- 19 • Declaration of Eric Ingalls in Support of Plaintiff's Motion for Preliminary
- 20 • Approval of Class Action and PAGA Settlement
- 21 • Declaration of David Yeremian in Support of Plaintiff's Motion for
- 22 • Preliminary Approval of Class Action and PAGA Settlement
- 23 • Declaration of Alvin B. Lindsay in Support of Plaintiff's Motion for
- 24 • Preliminary Approval of Class Action and PAGA Settlement
- 25 • Declaration of Walter L. Haines in Support of Plaintiff's Motion for
- 26 • Preliminary Approval of Class Action and PAGA Settlement
- 27 • [PROPOSED] Order Granting Plaintiff's Motion for Preliminary
- 28 • Approval of Class Action and PAGA Settlement

29 Laura A. Wolfe (SBN: 266751)
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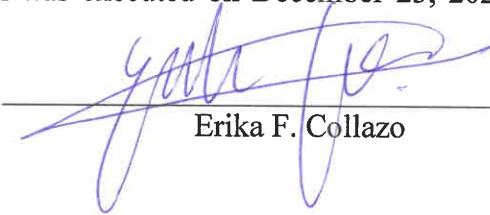
45 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
46 processing of correspondence for mailing with the United States Postal
47 Service and that each day's mail is deposited with the United States Postal
48 Service that same day in the ordinary course of business. On the date set
49 forth above, I served the aforementioned document(s) on the parties in
50 said action by placing a true copy thereof enclosed in a sealed envelope
51 with postage thereon fully prepaid, for collection and mailing on this date,
52 following ordinary business practices, at Elk Grove, California, addressed
53 as set forth above.

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

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

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

5 I declare under penalty of perjury under the laws of the State of California that the foregoing
6 is true and correct, and that this declaration was executed on December 23, 2021, at Elk Grove,
7 California

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9 _____
10 Erika F. Collazo
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