

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
Roman Shkodnik (SBN 285152)
roman@yeremianlaw.com
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

UNITED EMPLOYEES LAW GROUP, PC
Walter Haines (SBN 71075)
whaines@uelg.com
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (310) 652-2242

Attorneys for Plaintiff JOHN PEHKONEN,
on behalf of himself and others similarly situated

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

JOHN PEHKONEN, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

BUREAU VERITAS COMMODITIES
AND TRADE, INC. fka INSPECTORATE
AMERICAN CORPORATION, a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20STCV40104
Related Case No. 20STCV49152

Judge: Hon. Carolyn Kuhl

Department: 12

CLASS ACTION

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of Walter
Haines; Memorandum of Points and Authorities;
and [Proposed] Order]*

Date: April 21, 2022
Time: 10:30 a.m.
Dept.: 12

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California, and the Ninth Circuit Court of Appeals. I am the managing attorney of David Yermian & Associates, Inc., counsel for Plaintiff John Pehkonen (“Plaintiff”) on behalf of himself and similarly situated employees of Defendant Bureau Veritas Commodities and Trade, Inc. fka Inspectorate American Corporation (“Defendant”). I and my firm are referred to herein as Class Counsel. I have personal knowledge of the facts herein and if called as a witness, I could and would competently testify.

2. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I have represented Plaintiff and the putative Class since the inception of this matter. I submit this Declaration in support of the Motion for Preliminary Approval, filed by Plaintiff, on behalf of himself and other similarly situated employees of Defendant, and without opposition from Defendant, for preliminary approval of the parties' Joint Stipulation of Class Action and PAGA Claims ("Settlement Agreement" or "Settlement"), a true and correct copy of which is attached hereto as **Exhibit 1**.

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

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

5. I have been practicing law since 2003. Since 2007, I have focused almost exclusively

1 on representing employees, including in wage-and-hour class actions. During my career I have
2 represented employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel
3 (including in the Central, Southern, Eastern and Northern Districts of California), and I have
4 obtained six and seven figure settlements against a range of defendants, including Fortune 500
5 companies. These cases have involved the gamut of wage-and-hour claims, including claims for
6 failure to pay minimum wages, unpaid wages and overtime, inaccurate pay statements, and failure
7 to pay timely wages - similar to claims at issue in the present matter.

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

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

21 8. In the last several years I have had several contested class cases certified. When
22 necessary we pursue cases on appeal. Owing to my experience, I am well qualified to evaluate the
23 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated
24 over 100 class action settlements, including many involving the same issues presented in this
25 case. A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis*
26 *v. Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);
27 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead
28 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size

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

17 9. For purposes of this motion, the “Class” or “Class Members” consist of all current and
18 former non-exempt employees of Defendant employed during the Class Period. The Class Period
19 is the period from February 18, 2018 through August 28, 2021. I do not believe that I have any
20 conflicts of interest with the Class or with the Class Representative. I am not related to the Class
21 Representative. I have not previously represented Defendant in any matter. I respectfully submit
22 that I, and David Yeremian & Associates, Inc. are well suited to act as Class Counsel in this
23 action, and we have and will continue to vigorously represent the interests of the Class Members.

24 **PROCEDURAL HISTORY**

25 10. On December 23, 2020, Plaintiff filed a class action complaint against Defendant in the
26 Superior Court for the State of California, in Los Angeles, Case Number 20STCV40104,
27 alleging: (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) meal
28 period violations; (4) rest break violations; (5) failure to keep required payroll records; (6)

1 violation of Labor Code § 226(a); (7) penalties pursuant to Labor Code §§ 203; and, (8) violation
2 of Business & Professions Code §17200, *et seq.* (“Class Action”). On December 23, 2020,
3 Plaintiff filed a Complaint for Representative Action Penalties under the Private Attorneys’
4 General Act (“PAGA”), alleging (1) failure to pay minimum wages; (2) failure to pay wages and
5 overtime; (3) meal period violations; (4) rest break violations; (5) violation of Labor Code §§
6 226(a) and 1174; and, (6) violation of Labor Code §§ 203 and 204 in Los Angeles County
7 Superior Court Case Number 20STCV49152. (“PAGA Action”). On July 10, 2019, Defendant
8 filed a motion to compel arbitration and on August 8, 2019, Plaintiff filed an amended Complaint
9 that dismissed the class claims and only included PAGA. On March 21, 2022, Class Action and
10 PAGA Action were related.

11 **INVESTIGATION AND DISCOVERY**

12 11. I have participated in all discovery, mediation and negotiations since the inception of
13 Plaintiff’s case. Before filing the lawsuit, Class Counsel investigated and researched the facts and
14 circumstances underlying the pertinent issues and the law applicable thereto. This required
15 thorough discussions and interviews between Class Counsel and Plaintiff John Pehkonen, as well
16 as preliminary research into the various legal issues involved in the case. After conducting their
17 initial investigation, Class Counsel determined that Plaintiff John Pehkonen’s claims were well-
18 suited for class and representative action adjudication owing to what appeared to be a common
19 course of conduct affecting a similarly situated group of employees.

20 12. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
21 and claims giving rise to the action, including: (1) conducting informal and formal discovery, and
22 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and
23 pay records as well as employment handbooks, Plaintiff’s personnel files, relevant policies and
24 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
25 damage models based on interpretations of California law; and (5) reviewing information
26 provided by Defendant at the mediation. The Class enumerated in this action is ascertainable
27 because the Class Members may be readily identified by reference to Defendant’s records.
28 Defendant have agreed to share the information from these records with the Class Action

1 Administrator in order to identify and contact the Class Members. I understand there are
2 approximately 150 total Class Members.

3 13. Defendant, for their part, vigorously contested liability, the amount of claimed
4 damages, and the propriety of class certification. After Class Counsel analyzed the relevant
5 documents and other gathered data, Class Counsel believed that this case was appropriate for
6 resolution via mediation. Given the high level of risk present for both sides, the parties elected to
7 mediate Plaintiff's claims and explore the possibility of settlement.

8 14. On October 26, 2021, the parties mediated this case with the Hon. Howard R.
9 Broadman (Ret.), a respected and highly experienced mediator in wage and hour class actions.
10 During mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including
11 the risks of litigation and the risks to both parties of proceeding with a motion for class
12 certification as well as the law relating to off-the-clock work, meal and rest breaks, and wage
13 statements.¹ Defendant's counsel represented that Defendant would not be able to afford
14 defending against the lawsuit at trial if the case did not settle. As a result of the mediation, the
15 parties agreed to settle the lawsuit according to the terms set forth in the Settlement Agreement.
16 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and
17 delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
18 Counsel believes that the recovery for each class member is fair and reasonable taking into
19 consideration the amounts received in other wage and hour class actions, the risks inherent in
20 litigation of this genre, and the reasonable tailoring of each Class Member's claim to the
21 settlement award he or she will receive. Further, and based on the settlement negotiations, which
22 were extensive and conducted in good faith and at arm's length between attorneys with
23 substantial experience litigating class actions and wage and hour cases, the Settlement Agreement
24 was the product of a non-collusive settlement process in which the parties were forced to make
25 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

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28 ¹ Defendant's counsel also informed Class Counsel that Defendant was engaging in Pick up Stix
to resolve the claims of the Class Members.

SUMMARY OF SETTLEMENT

15. The parties have executed a Joint Stipulation of Class Action and PAGA Claims (“Settlement Agreement” or “Settlement”) attached hereto and incorporated herein as **Exhibit 1**. Defendant have agreed to pay \$375,000.00 (“Gross Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class. (Exh. 1, §I ¶ 16.)

16. The Settlement Agreement defines the “Class” or “Class Members” as all current and former non-exempt employees of Defendant in the state of California employed during the Class Period (Exh. 1, §I ¶¶ 4, 5.) However, it does not include any person who submits a timely and valid request to “Opt-Out” from the Class. (Exh. 1, §I ¶ 23.) “Class Period” means the period from October 20, 2016 until February 28, 2022. (Exh. 1, §I ¶ 6.)

17. The “Net Settlement Amount” shall be the Gross Settlement Amount, less the Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, Settlement Administration Costs, and seventy-five percent (75%) of the PAGA Payment. (Exh. 1, §I ¶ 19.) These amounts are detailed as follows:

- not more than One-Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00) to Class Counsel for attorneys’ fees, and not more than Fifteen Thousand Dollars and Zero Cents (\$15,000.00) in costs; (Exh. 1, §V ¶ 45.);
- not more than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to the Class Representative for Service Enhancement Payment; (Exh. 1, §IV ¶ 42.);
- up to \$4,599.00 for the Settlement Administration Costs; (Exh. 1, §I ¶ 31.);
- Ten Thousand Dollars and Zero Cents (\$10,000.00) shall be allocated for settlement of claims for civil penalties under PAGA, where 75% (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) will be included in the Net Settlement Amount and distributed to Settlement Class Members); (Exh. 1, §VI ¶ 54.)

18. The “Individual Settlement Payment,” which is each Class Member’s share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period as a non-exempt

1 employee in California. (Exh. 1, §VI ¶ 50.)

2 19. The settlement amount was a compromise figure, factoring in the inherent risks related
3 to certification, liability and damages. However, taking into account all of the circumstances of
4 the action and the defenses raised by Defendant against certification, liability and damages, Class
5 Counsel believes that the settlement is fair and reasonable.

6 20. Class Members shall each receive a “Notice of Class Action Settlement” or “Notice
7 Packet” via regular First Class U.S. Mail, using the most current, known mailing addresses
8 identified in the Class List. (Exh. 1, §§VIII, IX ¶¶ 59, 60.) Before mailing, the Settlement
9 Administrator will perform a search based on the National Change of Address Database for
10 information to update and correct for any known or identifiable address changes. (Exh. 1, §§VIII,
11 IX ¶¶ 59, 60.) If a new address is obtained by way of a returned Notice Packet, then the
12 Settlement Administrator will promptly forward the original Notice Packet to the updated address
13 via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing.
14 (Exh. 1, §§ VIII, IX ¶¶ 59, 60.)

15 21. Class Members will have an opportunity to dispute the information provided in their
16 Notices of Class Action Settlement and they must timely produce evidence to support the
17 information is inaccurate. (Exh. 1, §§ VIII, IX ¶¶ 59, 64.) The Settlement Administrator shall
18 decide the dispute and may ask Defendant to produce the personnel and payroll files of the Class
19 Member disputing their credited workweeks in order to resolve the dispute. (Exh. 1, §§ VIII, IX
20 ¶¶ 59, 64.)

21 22. Class Members wishing to opt-out from the Settlement Agreement must sign and
22 postmark a written Request for Exclusion to the Settlement Administrator within the “Class
23 Member Exclusion Deadline.” (Exh. 1, § IX ¶¶ 61, 62.) The Exclusion Deadline will be thirty
24 (30) calendar days after the date the Notice Packet was mailed. (Exh. 1, § IX ¶¶ 61, 62.) The
25 delivery date is deemed to be the date the Opt-Out request is deposited in the U.S. Mail as
26 evidenced by the postmark. (Exh. 1, § IX ¶¶ 61, 62.)

27 23. Class Members will also have the opportunity to object to the Settlement Agreement,
28 by serving a copy of the objection to the Settlement Administrator at Simpluris, P.O. Box 26170,

1 Santa Ana, CA 92799. (Exh. 1, § IX ¶ 65.) All objections must be served within thirty (30)
2 calendar days of first mailing of the Class Notice. (Exh. 1, § IX ¶ 65.)

3 **THE STRENGTH OF PLAINTIFF’S CASE**
4 **IN LIGHT OF THE SETTLEMENT AMOUNT**

5 24. Because the class consists of numerous employees, it was unlikely that the potential
6 monetary claims of individual Class Members would have proved viable without the class-action
7 mechanism. The Settlement Agreement should be approved in light of two California appellate
8 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
9 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

10 25. The strength of the Plaintiff’s case in light of the settlement amount is deemed by
11 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175
12 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay
13 minimum wages and overtime, failed to provide meal and rest breaks, failed to provide accurate
14 wage statements, and failed to pay all wages upon termination, all in violation of California law.
15 Plaintiff seeks related violations of California’s Business & Professions Code, and penalties
16 pursuant to Labor Code § 2699 *et seq.* The merits of each of these claims will be addressed
17 separately below.

18 **Minimum Wages and Overtime**

19 26. Plaintiff alleged that Defendants failed to pay Plaintiff and other Class Members
20 minimum wages and overtime for all hours worked. Plaintiff contended that he and other Class
21 Members were not paid proper overtime and minimum wages. Specifically, Defendant’s
22 unlawfully rounded down the hours Employees as worked as shown in the earning statements.
23 However, Plaintiff’s review of the records showed that 68.5% of Employees were either overpaid
24 due to rounding or not affected by rounding making this claim difficult to certify. Additionally,
25 Defendant paid incentive, and other nondiscretionary bonuses to Employees. The bonus amounts
26 must be included in determining the regular rate of pay for overtime purposes. Defendant failed to
27 calculate the regular rate with the bonuses..

28 27. Defendant contend that they paid for all reported hours worked, that Class Members

1 were trained to record all hours worked, and that they paid proper minimum wages. Defendant
2 also pointed out that given the rounding analysis, the claim lacked merit under California law.
3 Additionally, Defendant also maintained that the allegations regarding failure to pay wages for
4 hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor
5 Code § 510. Defendant argued that given their written policies and practices, any unrecorded
6 hours were likely subject to individualized inquiry and unlikely to be certified. Furthermore,
7 Defendants contended they paid overtime at the appropriate regular rate of pay. Based on the
8 foregoing analysis, Plaintiff's expert valued the rounding claim at zero and the regular rate claim
9 at \$259,061.

10 **Meal Periods and Rest Breaks**

11 28. Plaintiff alleged that Defendant consistently failed to provide timely and uninterrupted
12 meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th
13 1004, 1040 (“[T]he wage order’s meal period requirement is satisfied if the employee (1) has at
14 least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for
15 the entire period.”).

16 29. Plaintiff argued that Defendant had a common practice and policy of denying
17 compliant meal periods. Specifically, Plaintiff and Class Members were regularly required to
18 work through their meal periods, never being provided the opportunity to take uninterrupted thirty
19 (30) minute meal periods in accordance with California law. Moreover, what meal periods Class
20 Members did receive were provided well after their fifth consecutive hour of work. This practice
21 of providing untimely and late meal periods comports with Defendant’s defective meal period
22 policy (requiring Class Members to take their meal periods after their fifth hour of work)
23 uniformly applicable to all Class Members. For each meal period missed, of less than 30 minutes,
24 or taken late for which the employee was not provided a reasonable opportunity to take a
25 complete and timely meal period, an employer must pay the employee an additional one hour of
26 compensation. Labor Code § 226.7. This additional hour of compensation is referred to as
27 “premium pay.” To comply with these laws, every employer must keep, for each employee,
28 accurate time records showing when the employee begins and ends each work period and takes

1 his or her meal periods. See Wage Order 4-2001(7)(A)(3).

2 30. Defendant disagreed with Class Counsel's interpretation of the law and facts.
3 Defendant argued that its written policies were valid and disseminated to all Class Members and
4 that it even paid meal period premiums from 2019 onward. Defendant contended that Class
5 Members were given a reasonable opportunity to take their meal periods, and in fact received
6 their meal periods most of the time and a meal period premium when the meal is facially non-
7 compliant

8 31. Class Counsel estimated Defendant's maximum total exposure on the meal break claim
9 at approximately \$520,971 (26,325 workweeks x 1 meal break violation per week x \$19.79
10 average hourly pay). This number was discounted due to the fact that Defendant argued many
11 individualized issues would apply making certification of this claim difficult to achieve.

12 32. The same argument applied to rest breaks. Plaintiff contended that Defendant did not
13 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
14 thereof. Class Members consistently worked in excess of consecutive four-hour shifts and were
15 entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift which
16 they were denied. Class Members were required to work through their rest breaks, and through
17 their entire shifts.

18 33. Defendant maintained that it did provide the reasonable opportunity for Class Members
19 to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest breaks
20 need not be recorded. As these considerations would likely depress the damages *vel non*
21 ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break
22 claim. Class Counsel estimated Defendant's maximum total exposure on the rest break claim at
23 approximately \$520,971 (26,325 workweeks x 1 rest breaks violations per week x \$19.79 average
24 hourly pay). Owing to the arguments above and the fact that recording of rest periods is not
25 required, this claim was substantially discounted, and was not a major driver of exposure in this
26 case.

27 **Paystub Violations**

28 34. Plaintiff also contended that Defendant failed to provide Class Members with accurate,

1 itemized wage statements in writing as required by California Labor Code § 226(a) because of the
2 systematical underpaying of Employees due to the off-the-clock work which Defendant knew or
3 reasonably should have known were owed to Plaintiff and Class Members. As a direct and
4 proximate cause of Defendant's violation of Labor Code § 226(a), the Class Members suffered
5 injuries, including among other things confusion over whether they received all wages owed
6 them. Pursuant to Labor Code §§ 226(a) and 226(e), employees are entitled to recover the greater
7 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
8 and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
9 aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs
10 and reasonable attorneys' fees.

11 35. Defendant contended that Plaintiff's claim for further Labor Code § 226(e) penalties
12 would depend in large part on their underlying wage claims, and thus be subject to the same
13 defenses. Defendant further contended that wage claim violations, even if established, could not
14 be the predicate for a Labor Code § 226 wage statement claims. *See, e.g. Culley v. Lincare Inc.*
15 (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4
16 Cal.App.5th 385, 392-393 (noting wage statement need only document compensation actually
17 received and the hours used to calculate that compensation). Finally, because the damages for this
18 cause of action are penalties, the statute of limitations only runs from one year prior to the filing
19 of the original complaint. *See* Cal. Civ. Pro. § 340.

20 36. Plaintiff's expert estimated Defendant's maximum total exposure on the section 226
21 claim at approximately \$224,250 (for 65 Class Members from October 20, 2019 to October 26,
22 2021). The parties discussed these issues, and in light of these and other considerations Class
23 Counsel factored in a reduction of liability and damages for this cause of action.

24 **Failure to Pay Final Wages**

25 37. In failing to pay the California Class Members their minimum wages, overtime wages,
26 all discussed above, Defendant willfully failed to pay these the California Class Members all
27 wages due and certain at the time of termination or within seventy-two (72) hours of resignation,
28 as required under Labor Code § 203.

1 38. Labor Code § 203 provides that if an employer willfully fails to pay an employee all
2 wages due at termination or within 72 hours of resignation, then that employee's wages shall
3 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
4 Because Class Members stopped working for Defendant but again were not paid their full
5 compensation for the reasons discussed above, Class Members did not receive all wages due upon
6 termination of employment.

7 39. Defendant argued that, under Labor Code § 203, employers are only obligated to pay
8 waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of
9 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

10 A willful failure to pay wages within the meaning of Labor Code Section 203
11 occurs when an employer intentionally fails to pay wages to an employee when
12 those wages are due. However, a good faith dispute that any wages are due will
preclude imposition of waiting time penalties under Section 203.

13 A "good faith dispute" that any wages are due occurs when an employer presents
14 a defense, based in law or fact, which, if successful, would preclude any recovery
15 on the part of the employee. The fact that a defense is ultimately unsuccessful will
16 not preclude a finding that a good faith dispute did exist. Defenses presented
which, under all the circumstances, are unsupported by any evidence, are
unreasonable, or are presented in bad faith, will preclude a finding of a "good
faith dispute."

17 Defendant maintained that because they had viable defenses in both law and fact, especially in
18 light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in any case,
19 such penalties were subject to a three-year limitations period under Labor Code § 203(b).

20 40. Plaintiff's expert estimated Defendant's maximum total exposure on the section 203
21 claim at approximately \$356,275 (54 former employees from October 20, 2016 to October 26,
22 2021). Given the foregoing arguments, this claim had to be steeply discounted.

23 **PAGA Penalties**

24 41. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows
25 Plaintiff to obtain civil penalties on behalf of himself and other Class Members for Defendant's
26 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
27 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
28 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)

1 for each aggrieved employee per pay period for the initial violation and two hundred dollars
2 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
3 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
4 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)
5 percent allocated to the affected employees. The limitations period as for all penalties is one year
6 prior to the filing of the complaint.

7 42. The provisions of the Labor Code potentially triggering PAGA penalties in this case
8 include but are not limited to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558,
9 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699 and
10 applicable IWC Wage Orders. Defendant asserted that if PAGA penalties were mandatory, an
11 employer's PAGA liability would be huge because of the possibility of collecting multiple civil
12 penalties for a single violation, and thus such penalties would almost always dwarf the damages
13 available under the causes of action proper. However, PAGA penalties are not mandatory but
14 permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the
15 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
16 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
17 oppressive, or confiscatory." See *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112
18 (substantially reducing PAGA penalties by 30% under this provision). Defendant here maintained
19 that it had a strong argument that it would be unjust to award maximum PAGA penalties.

20 43. Furthermore, PAGA penalties are also derivative of each and every other claim, and
21 Defendant therefore argued the PAGA claims would be subject to the same defenses to the
22 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be
23 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for
24 initial violations under the applicable statutes, because Defendant had never been notified of the
25 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to
26 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.
27 4th 1157, 1211-12. Therefore, if Labor Commissioner - on whose behalf Plaintiff is prosecuting
28 this action for civil penalties - would not impose civil penalties in a case like this, the Court may

1 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
2 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court's reduction of PAGA civil
3 penalties by 30 percent, finding that awarding the full penalties would have been "unjust" because
4 "...a court may award a lesser amount than the maximum civil penalty amount specified by this
5 part if, based on the facts and circumstances of the particular case, to do otherwise would result in
6 an award that is unjust, arbitrary and oppressive, or confiscatory." Additionally, PAGA penalties
7 for multiple Labor Code violations are "stacked," and plaintiff is entitled to recover penalties for
8 multiple violations based on the same conduct. *Hernandez v. Towne Park, Ltd.*, No. 12 Civ.
9 02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22, 2012) ("federal courts applying
10 California law have concluded that stacking is appropriate"; defining "stacking" as multiple
11 PAGA penalties assessed for the same pay period for different Labor Code violations). However,
12 as discussed above PAGA provides that the Court "may award a lesser amount than the maximum
13 civil penalty amount specified by this part if, based on the facts and circumstances of the
14 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
15 or confiscatory."

16 44. Class Counsel estimated Defendant's maximum total exposure on the PAGA claim at
17 approximately \$227,500 (\$100 x **2,275 number of paystubs** from October 20, 2019 to October
18 26, 2021).² Class Counsel then applied discounts in light of the countervailing arguments with
19 regard to the other causes of action, and moreover the Court's power to award "a lesser amount
20 than the maximum civil liability." The parties also considered that the purpose of PAGA is to
21 "achieve maximum compliance with state labor laws,". *Iskanian v. CLS Transp. Los Angeles,*
22 *LLC* (2014) 59 Cal. 4th 348, 379. This makes the settlement's contemplated PAGA payment of
23 \$10,000.00 appropriate.

24 **Unfair Business Practices**

25 45. Plaintiff pleaded this cause of action in order to augment their other causes of action

26
27 ² Additionally, if the PAGA penalties are stacked Class Counsel estimated Defendant's maximum
28 total exposure on the PAGA claim at approximately \$693,975(\$23,000 PAGA for Overtime +
\$227,000 PAGA for Rest Breaks+\$214,200 PAGA for Meal Breaks+\$227,500 PAGA for Wage
Statements).

1 and aid in their prosecution. Business & Professions Code § 17208 extends the statute of
2 limitations on Plaintiff's wage claims, which qualify as unfair business practices, to four years
3 rather than the three years provided by statute.

4 **Summary**

5 46. The foregoing discussion has sought to explain how the settlement amount is adequate
6 in light of the merits of Plaintiff's case. It has done this by explaining the legal basis for each of
7 Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of
8 those causes of action, and relating Defendant's legal and factual arguments that worked to
9 derogate from the strength of Plaintiff's case.

10 47. Class Counsel had to apply appropriate discounts in light of the facts and law as
11 discussed above. Thus, this settlement, like most others, was the product of compromise. Because
12 of these and other risks, a recovery of \$375,000.00 under the Settlement Agreement is an
13 excellent result. Under the Settlement, each of the approximately 150 Class Members will receive
14 on average \$1,436.01 after expenses.

15 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,** 16 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION** 17 **STATUS THROUGH TRIAL**

18 48. The next *Clark/Kullar* factors recognize that settlements take into consideration the
19 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
20 certification. Consequently, it is proper that trial courts should keep these considerations in mind
21 when judging the adequacy of class action settlements.

22 49. Further litigation of this case posed real risks for a number of reasons. First, there were
23 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in
24 the previous section. In that section, it was observed that almost every cause of action was subject
25 to some unique indeterminacy of its own, and that the derivative causes of action were thus
26 subject to a double indeterminacy, both their own and those of the causes of action on which they
27 were based.

28 50. The parties disputed the effect of these and other issues on class certification and

1 decertification. Class Counsel maintained that there were several legal and factual questions at
2 issue in the case that could best be decided on a class wide basis. Class Counsel contended that
3 the same policies and practices applied to all Class Members and therefore common questions
4 obtained and were likely to predominate over individual inquiries. Defendant disputed these
5 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
6 such as this one. Defendant also argued that its policies were compliant with the law, while
7 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would
8 give rise to common questions amenable to certification. Thus the parties had set positions on the
9 propriety of certifiability and liability that did not admit of an easy resolution.

10 51. Finally, it is always preferable to reach a relatively early resolution of a dispute
11 because, in addition to what has already been said, such resolutions save time and money that
12 would otherwise go to litigation. In light of the risk and expense of the lawsuit and proceeding to
13 trial there was a need to resolve this matter soon than later. Most cases settle sooner or later. If
14 this case settled after further litigation, the settlement amount would have taken into account the
15 additional costs incurred, and there might have been less available for Class Members after all
16 was said and done. This is not just an abstract contention. The parties were moving into the phase
17 of this litigation where they would have had to depose a number of people such as managers,
18 supervisors, and employees in order to establish liability for trial. Discovery disputes would have
19 been in the offing. The parties were also aware that a class action trial would be a complicated
20 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.
21 In contrast, the settlement provides real benefits for Class Members in the immediate future. The
22 benefits are not insignificant for anyone, especially given the current economic climate.
23 Consequently, the risk and expense of further litigation outweighed any benefit that might have
24 been gained otherwise.

25 **NOTICE TO AND REACTION OF CLASS MEMBERS**
26 **TO THE PROPOSED SETTLEMENT**

27 52. It is premature to address this factor now, at the preliminary approval stage; however,
28 some observations are in order. First, the notification procedure set out in the Settlement

1 Agreement provides the greatest likelihood that each and every Class Member will receive the
2 Notice of Class Action Settlement (“Notice” or “Notice Packet”), attached to the Settlement
3 Agreement as **Exhibit A**. Under the Settlement Agreement, the Settlement Administrator will
4 send the Notice to each Class Member via First Class U.S. mail. (Exh. 1, §§VIII, IX ¶¶ 59, 60.)
5 Before mailing, the Settlement Administrator will perform a search based on the National Change
6 of Address Database for information to update and correct for any known or identifiable address
7 changes. (Exh. 1, §§VIII, IX ¶¶ 59, 60.) If a new address is obtained by way of a returned Notice
8 Packet, then the Settlement Administrator will promptly forward the original Notice Packet to the
9 updated address via first-class regular U.S. mail, indicating on the original packet the date of such
10 re-mailing. (Exh. 1, §§VIII, IX ¶¶ 59, 60.) Thus, most, if not all, Class Members will likely
11 receive the Notice.

12 53. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the
13 claims involved, the terms of the settlement, and their options thereunder. They provide for a
14 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement.
15 The efforts taken to ensure that Class Members receive the Class Notice and are well informed
16 about the settlement augur a favorable response rate.

17 54. All Class Members will benefit because Defendant who have been sued are generally
18 more likely to comply with the law in the future. If a Class Member disputes the number of
19 workweeks stated for that Class Member in the Class Notice, the Class Member must ask the
20 Settlement Administrator to resolve the matter by submitting in writing under penalty of perjury
21 the workweeks that the Class Member claims to have actually worked for Defendant during the
22 Class Period. (Exh. 1, §§ VIII, IX ¶¶ 59, 64.) Defendant’s records shall have a rebuttable
23 presumption of correctness. After consultation with Class Counsel and Defendant’s Counsel, the
24 Class Action Administrator will make a determination of the Class Member’s total workweeks
25 during the applicable period. *Id.*

26 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

27 55. The foregoing discussion establishes the fairness of the class-action settlement in the
28 instant case. It has done this by analyzing the settlement in light of the appellate decisions in

1 *Clark and Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
2 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour
3 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.
4 Defendant has agreed to pay fair value to settle Plaintiff's claims given the existence of legal
5 uncertainty. From Class Counsel's substantial experience with wage-and-hour class action
6 lawsuits Class Counsel believe that this case could not have settled on better terms under the
7 circumstances. Request therefore is made that the settlement be granted preliminary approval so
8 that those persons whom it was intended to benefit shall be afforded the opportunity to determine
9 its adequacy.

10 **REQUEST FOR ATTORNEYS' FEES**

11 56. Under the Settlement, Class Counsel also requests, without opposition from Defendant,
12 an award of Attorneys Fees and Costs consisting of: (1) no more than \$125,000.00 and (2)
13 \$15,000.00 for reimbursement of Class Counsel's costs. (Exh. 1, §V ¶ 45). This request is fair,
14 reasonable, and adequate to compensate Class Counsel for the substantial work they have put into
15 this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees
16 award is intended to reimburse Class Counsel for all uncompensated work that they have already
17 done and for all the work they will continue to do in carrying out and overseeing the notification
18 to Class Members, communicating with Class Members regarding their claims, and assisting in
19 the administration of the settlement if it is preliminarily approved.

20 57. My firm took this case on a contingent-fee basis against a business represented by a
21 reputable defense firm. When we take contingent cases, we must pay careful attention to the
22 economics involved or one bad case can destroy years of work. Accordingly, when we take
23 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
24 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
25 number of hours in a day is limited. Because of this, when we take on one particular matter, we
26 are unable to take on other matters. When Class Counsel became involved in this case, we
27 realized the time commitment that it would entail and we were forced to turn down matters that
28 we otherwise should have been able to handle. In sum, this case claimed a significant portion of

1 Class Counsel's time and attention throughout its pendency.

2 58. The requested fee is reasonable for the services provided to Class Members and for the
3 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see*
4 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would
5 still be justified. Here, lodestar will substantially exceed the requested fees. Class Counsel will
6 more fully brief the Court on its lodestar in the motion for final approval.

7 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

8 59. Plaintiff herein is entitled to reasonable service payment for his efforts and initiative in
9 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better
10 apprising himself of his rights, deciding whether remedial action should be taken, how it should
11 be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours
12 with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only
13 his own rights but also those of his co-workers by filing a class action lawsuit.

14 60. The courage it took to stand up to Defendant by filing and litigating this action in this
15 way should not be underestimated. By suing Defendant, Plaintiff increased his risk of retaliation
16 by prospective employers. Plaintiff's lawsuit has now required Defendant to expend considerable
17 resources, and Plaintiff justifiably fears the fact that he served as class representatives in a wage
18 and hour class action will not be lost on a prospective employer who has to choose between an
19 applicant who has never sued a prior employer and one who has. Plaintiff contends this risk is
20 particularly real in the information age, where employers can, more easily than ever, perform
21 background checks of prospective employees, sometimes with the stroke of a key. It is common
22 for employers to screen employee candidates to determine whether they have ever filed suit, and
23 employee candidates who might be branded "litigious" are likely to be screened out of the
24 process. In fact, an entire industry has developed for providing employers with background
25 information on employee candidates.

26 61. But Plaintiff did not allow his fears of the potential repercussions of being class
27 representatives to deter him from acting for the benefit of Class Members. To the contrary,
28 Plaintiff has been intimately involved in this case since its inception. He has devoted a substantial

1 amount of time to helping Class Counsel effectively develop and prosecute this action at every
2 stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with
3 Class Counsel on numerous occasions to discuss every aspect of his case. Plaintiff provided Class
4 Counsel with information about Defendant and about the industry generally, reviewed documents,
5 identified witnesses, consulted Class Counsel throughout the litigation repeatedly and at length,
6 participated in the mediation process, monitored the progress of the litigation with Class Counsel,
7 and reviewed and signed the Settlement Agreement.

8 62. Plaintiff has spent a significant amount of time with Class Counsel detailing his
9 knowledge of Defendant's practices and helping Class Counsel with the prosecution of this
10 action. He has diligently, adequately, and fairly represented Class Members, and has not placed
11 his interests above any member of the putative class. The payment to Plaintiff is intended to
12 recognize his time and effort on behalf of the Class. The amount requested is fair and appropriate
13 based on his contribution and involvement. For example, Plaintiff instigated the lawsuit by
14 bringing these violations to the attention of Class Counsel. He spent several hours answering
15 questions and providing information to Class Counsel throughout the pendency of this action. He
16 identified witnesses, explained to Class Counsel day to day business practices of Defendant with
17 regard to work schedules, etc. The parties are in agreement that Plaintiff is entitled to an
18 enhancement for his time and effort in this matter. This sort of payment to a class representative
19 has been a common feature of settlements negotiated by Class Counsel and has been routinely
20 approved by trial courts.

21 63. In light of the foregoing, Class Counsel believes that the service enhancement payment
22 in the amount of \$7,500.00 is fair and reasonable. This amount is a far cry from the \$50,000 of
23 enhancement awards to the two named plaintiffs approved by the trial court in *Clark*. See *Clark*,
24 *supra*, 175 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to
25 ensure that class representatives are not overcompensated at the expense of the class, modest
26 incentive awards in employment class actions, such as the one here, are necessary not only to
27 compensate class representatives for the time they spend in the case, but also, and more
28 importantly, to encourage aggrieved employees to challenge questionable employment practices

1 notwithstanding the very real consequences they may face.

2 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

3 64. The proposed Classes satisfy the criteria for certification of a settlement class under
4 California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to
5 the certification of the class for settlement purposes. In general, courts may take a proposed
6 settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor*
7 *Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in
8 certifying classes for settlement purposes. *Ibid.* Therefore the Court should take into
9 consideration the fact that the parties have settled their claims and stipulated to certification for
10 settlement purposes when assessing typicality and adequacy.

11 a. Numerosity. The putative classes are so numerous that joinder of all members is
12 impractical. Class Members are all current and former non-exempt employees of Defendant
13 employed during the Class Period. There are approximately 150 persons answering to this
14 definition. Thus, there are a sufficient number of Class Members to warrant certifying this as a
15 class action for settlement purposes.

16 b. Ascertainability. The putative classes are defined in a manner that is precise,
17 objective, and ascertainable. The Class Members have already been identified by reference to
18 Defendant’s payroll and personnel records.

19 c. Typicality. A class representative’s claims are typical when they arise from the
20 same event, practice, or course of conduct that gives rise to the claims of other putative class
21 members, and if their claims rest on the same legal theories. The class representative’s claims
22 must be “typical” but not necessarily identical to the claims of other class members. It is
23 sufficient that the representative is similarly situated so that he or she will have the motive to
24 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
25 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been
26 the law in California that the class representative must have identical interests with the class
27 members.”). Thus, it is not necessary that the class representative should have personally incurred
28 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*

1 (2001) 91 Cal.App.4th 224, 228.

2 Plaintiff's claims are typical of Class Members' claims because they arose from the same
3 factual basis and are based on the same legal theories. Plaintiff was employed by Defendant
4 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay
5 practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central
6 issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to
7 provide meal and rest periods etc.), which would arise if this were an individual action brought by
8 Plaintiff, apply to the other Class Members as well, and the answer to these questions would
9 determine Defendant's liability to the entire putative class. Thus, Plaintiff's claims are typical of
10 the claims of the putative class. Accordingly, the typicality requirement is satisfied.

11 d. Adequacy. A class representative must possess the same interest and suffer the
12 same injury as the class members. "To assure 'adequate' representation, the class representative's
13 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*
14 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
15 the adequacy requirement is satisfied when the class representative's interests are not antagonistic
16 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

17 Plaintiff has no conflicts with the class and in fact his interests are aligned with those of
18 the class. Because Plaintiff's claims are identical to those that would be asserted by the unnamed
19 Class Members were they before the Court, Plaintiff has every interest in zealously representing
20 the unnamed class members. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff has
21 devoted a substantial amount of time and energy to litigating this action and effecting a
22 settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-and-hour
23 litigation, especially class actions, and have zealously represented the interests of the class in
24 litigating this case. *See infra* ¶¶3-9. Accordingly, the adequacy requirement is satisfied.

25 e. Commonality. Common questions of law or fact in this case predominate over
26 individual questions. This action involves, *inter alia*, a determination about Defendant's alleged
27 failure to pay minimum wages, failure to pay all wages due to allegedly common and unlawful
28 policies, failure to provide meal and rest periods, the resulting failure to pay final wages when

1 required, the failure to provide accurate paystubs, the failure to pay employees on a timely basis,
2 and largely derivative claims under the Business & Professions Code and PAGA. Plaintiff
3 contends these practices, including the alleged failure to provide corresponding premium
4 payments, that affected class members in the same way. All class members were employed during
5 the Class Period. Therefore, the operative complaint delineates a common course of conduct
6 applicable to all Class Members. Therefore, based on Class Counsel's investigation, the review of
7 the discovery produced by Defendant, and their discussions with Plaintiff, Plaintiff contends the
8 evidence supports his position that the employment practices and policies of Defendant's business
9 were consistent and uniform.

10 f. Predominance. Individualized issues do not predominate over the issues of law and
11 fact that are common to the class as a whole. The principal issues of controversy are whether
12 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,
13 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were
14 subjected to the same policies and pay practices during the relevant time period. Plaintiff and
15 Class Members seek meal and rest break premiums, unpaid wages and overtime, and penalties for
16 work performed as non-exempt employees for Defendant. These issues are suitable for common
17 adjudication because all Class Members were subject to the same employment policies and
18 Plaintiff contends the practices applied uniformly to all Class Members.

19 g. Superiority. Class resolution is superior to other available methods for the fair and
20 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
21 individually control the prosecution of separate actions. Although the injury resulting from
22 Defendant's policies and practices are real and significant, the cost of individually litigating each
23 such case against Defendant would easily exceed the value of any relief that could be obtained by
24 any one Class Member individually. If Class Members are forced to litigate their claims
25 individually this would result in about 150 individual actions against Defendant. Here, the
26 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
27 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
28 dwarf a potential recovery.

1 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
2 actions by Class Members against Defendant asserting similar claims as here. Furthermore, San
3 Joaquin County is a compelling forum for this action given that Defendant's location is in San
4 Joaquin County and numerous Class Members work in this County.

5 i. There are no serious manageability difficulties presented by preliminarily
6 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
7 that would remain is claims administration and responding to possible objectors.

8 65. As part of the Stipulation, Plaintiff is to file (with leave of court) the First Amended
9 Class Action Complaint attached as Exhibit 2 to this declaration that will include the claims
10 asserted in the Complaint filed on December 23, 2020 for violations of California Private
11 Attorneys General Act of 2004 ("PAGA"), Labor Code § 2698 *et seq.* See, **Exhibit 2**, First
12 Amended Class Action Complaint.

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

15 Executed this 29th day of March 2022, at Glendale, California.

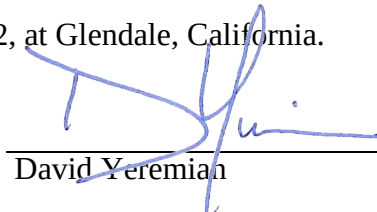
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17 
18 _____
19 David Yeremian
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EXHIBIT 1

DAVID YEREMIAN & ASSOCIATES, INC.

David Yeremian (SBN 226337)
david@yeremianlaw.com
Roman Shkodnik (SBN 285152)
roman@yeremianlaw.com
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

UNITED EMPLOYEES LAW GROUP, PC

Walter Haines (SBN 71075)
whaines@uelg.com
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (310) 652-2242

Attorneys for Plaintiff
JOHN PEHKONEN,
on behalf of himself and others similarly situated

[Additional counsel and party listed on following page]

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

JOHN PEHKONEN, on behalf of himself and
others similarly situated,

Plaintiff,

v.

BUREAU VERITAS COMMODITIES AND
TRADE INC. fka INSPECTORATE
AMERICAN CORPORATION, a Delaware
corporation; and DOES 1 through 50, inclusive

DEFENDANT.

Case No. 20STCV40104

ASSIGNED FOR ALL PURPOSES TO JUDGE
CAROLYN B. KUHL, DEPT. 12

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

1 HELENE WASSERMAN, Bar No. 130134

2 hwasserman@littler.com

3 DAVID S. MAOZ, Bar No. 233857

4 dmaoz@littler.com

5 **LITTLER MENDELSON, P.C.**

6 2049 Century Park East

7 5th Floor

8 Los Angeles, CA 90067.3107

9 Telephone: 310.553.0308

10 Fax No.: 310.553.5583

11 Attorneys for Defendant

12 BUREAU VERITAS COMMODITIES AND TRADE, INC.

13 fka INSPECTORATE AMERICAN CORPORATION

1 This Joint Stipulation for Class Action Settlement and Release of Claims is made and entered
2 into by and between Plaintiff JOHN PEHKONEN (“**CLASS REPRESENTATIVE**”) individually
3 and on behalf of the alleged putative class of all other similarly situated individuals, on the one hand,
4 and Defendant BUREAU VERITAS COMMODITIES AND TRADE, INC.
5 fka INSPECTORATE AMERICAN CORPORATION (“**DEFENDANT**”), on the other hand, to
6 resolve the class and representative action wage and hour disputes that led to the above-captioned
7 Litigation and the litigation entitled *Pehkonen v. Bureau Veritas Commodities And Trade, Inc. fka*
8 *Inspectorate American Corporation*, LASC Case No. 20STCV49152.

9 THE PARTIES STIPULATE AND AGREE as follows:

10 **I. DEFINITIONS**

- 11 1. “**Agreement**,” “**Stipulation**,” “**Settlement**” and “**Joint Stipulation**” all mean this
12 document.
- 13 2. “**Class Counsel**” shall mean David Yeremian of David Yeremian & Associates, Inc.
- 14 3. “**Class Counsel Fees and Costs Payment**” means the amount of attorneys’ fees and
15 costs awarded by the Court pursuant to the terms of this Agreement.
- 16 4. “**Class Member**” shall mean a member of the Class.
- 17 5. “**Class**” shall mean any and all persons who are or have been employed by
18 DEFENDANT as non-exempt employees in the state of California during the Class Period.
- 19 6. “**Class Period**” means from October 20, 2016 until February 28, 2022.
- 20 7. “**Class Representative Service Payment**” means the payments to CLASS
21 REPRESENTATIVE John Pehkonen described in Section IV of this Agreement.
- 22 8. “**Court**” means the Superior Court of California for the County of Los Angeles.
- 23 9. “**Court’s Final Order and Judgment**” means the Final Order Approving Class
24 Action Settlement and Judgment in a form to be agreed upon by the Parties and as approved by the
25 Court.
- 26 10. “**DEFENDANT**” shall mean BUREAU VERITAS COMMODITIES AND
27
28

1 TRADE, INC. fka INSPECTORATE AMERICAN CORPORATION.

2 11. **“DEFENDANT’ Counsel”** shall mean Helene Wasserman and David S. Maoz of
3 Littler Mendelson.

4 12. **“Effective Date”** shall have the meaning ascribed to it in Paragraph 68 below.

5 13. **“Employee Payroll Taxes”** means the employee portion of all applicable tax
6 withholdings including, but not limited to, FICA, FUTA, and other employment related taxes and
7 withholding of federal, state, and local income taxes.

8 14. **“Employer Payroll Taxes”** means the employer’s share of FICA, FUTA, and all
9 other local, state, and federal payroll taxes and deductions related to the Individual Settlement
10 Payments.

11 15. **“Final Approval Hearing”** means the hearing at which the Court shall consider,
12 without limitations, any timely objections to the Settlement from Class Members, testimony from
13 the Parties or their counsel, declarations regarding the settlement process from the Settlement
14 Administrator, and otherwise make a final determination regarding the fairness of the Settlement
15 described herein.

16 16. **“Gross Settlement Amount”** means Three-Hundred Seventy-Five Thousand
17 Dollars and No Cents (\$375,000.00), payable by DEFENDANT as provided by this Agreement
18 and as ordered by the Court. The Gross Settlement Amount is inclusive of the following deductions:
19 all payments to Class Members, the Class Counsel Fees and Costs Payment, the CLASS
20 REPRESENTATIVE’ Service Payments, the Settlement Administration Fees, the California Labor
21 & Workforce Development Agency (**“LWDA”**) payment described in Paragraph 41. There is no
22 reversion to Defendant of the Gross Settlement Amount as this is a common fund settlement.

23 17. **“Individual Settlement Payment”** means the payment to be made to Participating
24 Class Members from the Net Settlement Fund, pursuant to the terms of this Agreement.

25 18. **“Litigation”** means the lawsuits entitled *Pehkonen v. Bureau Veritas Commodities*
26 *And Trade, Inc. fka Inspectorate American Corporation*, Los Angeles County Superior Court, Case
27
28

No. 20STCV40104 and *Pehkonen v. Bureau Veritas Commodities And Trade, Inc. fka Inspectorate American Corporation*, Los Angeles County Superior Court, Case No. 20STCV49152.

19. **“Net Settlement Fund”** means the remainder of the Gross Settlement Fund after making the deductions described in Paragraph 16. The Net Settlement Fund shall be allocated among the Participating Class Members according to the formula and other terms described in Section VI of this Agreement.

20. **“Non-Participating Class Member”** means a putative Class Member who submits a timely and valid request to opt-out of the Settlement.

21. **“Notice of Proposed Settlement”** means the Notice of Settlement of Class Action in the form attached hereto as **Exhibit A**, and as approved by the Court.

22. **“Operative Complaint”** means the Complaints on file in the Litigation and described more fully in Paragraph 32 of this Agreement.

23. **“Participating Class Member”** means a Class Member who does not timely and validly opt out of the Settlement.

24. **“PAGA”** means the California Labor Code Private Attorneys General Act, California Labor Code §§ 2698, *et seq.*

25. **“Parties”** shall refer to the Class Members and DEFENDANT, each of whom is a “Party.”

26. **“Preliminary Approval of the Settlement”** means the Court’s preliminary approval of the Settlement.

27. **“Released Parties”** collectively means: (a) DEFENDANT; (b) DEFENDANT’s respective past, present, and future parents, subsidiaries, affiliates, divisions, fiduciaries, predecessors, successors, and assigns; and (c) the past, present, and future shareholders, directors, owners, officers, directors, agents, representatives, employees, attorneys, insurers, and the predecessors, successors, and assigns of any of the foregoing.

28. **“Released Claims”** means the following:

1 a. **Release as to All Settlement Class Members.** Upon the date that the settlement
2 is considered final as defined in Paragraph 68, CLASS REPRESENTATIVE and
3 all members of the Settlement Class, except those that make a valid and timely
4 request to be excluded from the Class, waive, release, discharge, and promise
5 never to assert in any forum any and all claims against DEFENDANT, their
6 respective past, present, and future parents, subsidiaries, affiliates, predecessors
7 or successors in interest, or the officers, directors, shareholders, employees,
8 attorneys, agents, assigns, insurers, re-insurers, of any of them, that were alleged
9 in the Litigation or which could have been alleged based on the facts asserted in
10 the Litigation based on the allegations, facts, matters, transactions or occurrences
11 alleged therein, specifically including without limiting the generality thereof: (1)
12 claims for missed or unpaid meal periods or rest periods; (2) failure to pay all
13 wages owed (including without limitation, failure to pay the regular rate of pay,
14 overtime pay, double time pay, premium pay and/or otherwise properly calculate
15 overtime); (3) any claim for meal period violations; (4) rest break violations; (5)
16 failure to maintain records; (6) wage statement violations; (7) waiting time
17 penalties; (8) PAGA penalties; and/or (9) unfair competition claims based on the
18 foregoing. The release of the foregoing claims, extends to all theories of relief
19 regardless of whether the claim is, was or could have been alleged as separate
20 claims, causes of action, lawsuits or based on other theories of relief, whether
21 under federal law, state law or common law (including, without limitation, as
22 violations of the California Labor Code, the Wage Orders, applicable regulations,
23 California's Business and Professions Code section 17200 or under California's
24 Private Attorney General Act) and includes all types of relief available for the
25 above-referenced claims, including, without limitation, any claims for damages,
26 restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts,

1 interest, injunctive relief, declaratory relief, or liquidated damages. As to the
2 PAGA claims, only those Class Members who worked during the time period
3 between October 20, 2019 and February 28, 2022 (“PAGA Period”) will release
4 claims for civil penalties under PAGA, and only for the claims that were pled in
5 the action, including the Complaint, or that could have been plead based on the
6 facts alleged in the Litigation.

7 b. **General Release by Named PLAINTIFF Only.** In addition to the release
8 made in Paragraph 28(a), CLASS REPRESENTATIVE makes the additional
9 following general release of all claims, known or unknown. Upon the date that
10 the settlement is considered final as defined in Paragraph 68, CLASS
11 REPRESENTATIVE releases DEFENDANT, and each of their respective
12 past, present, and future parents, subsidiaries, affiliates, predecessors or
13 successors in interest, officers, directors, shareholders, employees, attorneys,
14 agents, assigns, insurers, and re-insurers of any of them, from all claims,
15 demands, rights, liabilities and causes of action of every nature and description
16 whatsoever, known or unknown, asserted or that might have been asserted,
17 whether in tort, contract, or for violation of any state or federal statute, rule or
18 regulation arising out of, relating to, or in connection with any act or omission
19 by or on the part of each of the DEFENDANT.

20 29. **“Settlement”** means CLASS REPRESENTATIVE’s and DEFENDANT’s
21 agreement to settle the Litigation on the terms described in this Agreement.

22 30. **“Settlement Administrator”** means the third-party claims administration firm
23 selected by CLASS REPRESENTATIVE and DEFENDANT and approved by the Court. CLASS
24 REPRESENTATIVE and DEFENDANT have agreed to propose Simpluris as the Settlement
25 Administrator for the Court’s consideration and approval.

26 31. **“Settlement Administration Fees”** means the amount of fees and costs incurred by
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1 the Settlement Administrator awarded by the Court pursuant to the terms of this Agreement, which
2 is not anticipated to exceed \$4,599.

3 **II. THE LITIGATION**

4 32. Procedural History. On October 20, 2020, CLASS REPRESENTATIVE filed a
5 class action in the Superior Court of California for the County of Los Angeles against
6 DEFENDANT entitled *Pehkonen v. Bureau Veritas Commodities And Trade, Inc. fka Inspectorate*
7 *American Corporation* (Los Angeles County Superior Court, Case No. 20STCV40104) that
8 included causes of action for: (1) failure to pay minimum wages; (2) failure to pay wages and
9 overtime; (3) meal period violations; (4) rest break violations; (5) failure to keep required payroll
10 records; (6) violation of Labor Code section 226(a); (7) penalties pursuant to Labor Code section
11 203; and, (8) violation of Business & Professions Code sections 17200, *et seq.* DEFENDANT filed
12 an Answer generally and specifically denying the material allegations of the Complaint and setting
13 forth numerous affirmative defenses thereto. On December 23, 2020, CLASS
14 REPRESENTATIVE filed a Complaint against DEFENDANT under the Private Attorney's
15 General Act of 2004 ("PAGA") with causes of action for: (1) failure to pay minimum wages; (2)
16 failure to pay wages and overtime; (3) meal period violations; (4) rest break violations; (5) violation
17 of Labor Code sections 226(a) and 1174; and, (6) violation of Labor Code sections 203 and 204.
18 DEFENDANT filed an answer generally and specifically denying the material allegations in the
19 Complaint and setting forth numerous affirmative defenses thereto.

20 33. Investigation and Discovery. Class Counsel has conducted a thorough investigation
21 of the facts in the Litigation and has diligently pursued an investigation of Class Members' claims
22 against DEFENDANT. CLASS REPRESENTATIVE have engaged in substantial investigation in
23 connection with the Litigation, including informal exchange of a large volume of information,
24 including confidential information, regarding the claims asserted in the Litigation, the defenses
25 available to DEFENDANT, and other relevant issues. DEFENDANT have produced, and Class
26 Counsel have reviewed and analyzed, relevant personnel and payroll information for CLASS
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1 REPRESENTATIVE and all Class Members.

2 34. Mediation. On October 26, 2021, CLASS REPRESENTATIVE and DEFENDANT
3 participated in an all-day mediation with mediator Hon. Howard R. Broadman (Ret.). At the
4 conclusion of the mediation, the Parties agreed to resolve the matter as stated herein and entered
5 into a Memorandum of Understanding memorializing the settlement agreement.

6 35. No Admission of Liability. CLASS REPRESENTATIVE and DEFENDANT have
7 entered into this Settlement in order to reduce the risks and costs of further litigation, and to avoid
8 further business distractions. DEFENDANT deny any liability or wrongdoing of any kind
9 associated with the claims alleged in the Litigation, including all allegations made in the Operative
10 Complaint. DEFENDANT further contend that, for any purpose other than settlement, this action
11 is not appropriate for class treatment. Among other things, DEFENDANT contend that they
12 complied in good faith with California wage and hour laws and the California Business and
13 Professions Code.

14 36. Inadmissibility of Agreement. Whether or not the Court fails to grant Final
15 Approval of the Settlement, neither this Agreement, nor any of its terms, nor any document,
16 statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof,
17 shall in any event be: (i) construed as, offered or admitted in evidence as, received as, or deemed
18 to be evidence for any purpose adverse to the Released Parties, including, but not limited to,
19 evidence of a presumption, concession, indication or admission by any of the Released Parties of
20 any liability, fault, wrongdoing, omission, concession or damage except for purposes of settling
21 this Action or enforcing the Released Claims contained herein pursuant to the terms of this
22 Agreement; (ii) disclosed, referred to or offered or received in evidence against any of the Released
23 Parties in any further proceeding in the Litigation or any other civil, criminal or administrative
24 action or proceeding except for purposes of settling this Litigation or enforcing the Released Claims
25 contained herein pursuant to the terms of this Agreement; or (iii) used in any other way or for any
26 other purpose except for: (a) purposes of settling this Litigation or enforcing the Released Claims
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1 contained herein pursuant to the terms of this Agreement; or (b) as evidence of relative value of
2 claims in mediation, Preliminary Approval and/or Final Approval when settling matters against
3 parties other than the Released Parties, in which case only public information may be provided.

4 37. Fair, Reasonable, and Adequate Settlement. Based on the investigation summarized
5 above, Class Counsel are of the opinion that the Settlement on the terms set forth in this Agreement
6 is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts
7 and circumstances, including the risk of significant delay, defenses asserted by DEFENDANT
8 unresolved legal issues that could have a material impact on the outcome of the Litigation, and
9 numerous potential appellate issues. CLASS REPRESENTATIVE and DEFENDANT recognize
10 that the issues presented in the Litigation are likely only to be resolved after extensive and costly
11 pretrial proceedings, including a dispute as to whether any of the claims asserted can be certified
12 as a class action, and that further litigation will cause inconvenience, distraction, disruption, delay
13 and expense disproportionate to the potential benefits of continued litigation. CLASS
14 REPRESENTATIVE and DEFENDANT agree that they have taken into account the risk and
15 uncertainty of the outcome inherent in any complex litigation of this nature.

16 **III.SETTLEMENT AMOUNT**

17 38. Consideration. The Gross Settlement Amount that DEFENDANT will be obligated
18 to pay in connection with the Settlement is Three-Hundred Seventy-Five Thousand Dollars and
19 Zero Cents (\$375,000.00), as set forth in Paragraph 16 above. The Gross Settlement Amount is
20 inclusive of all payments to Class Members, the Class Counsel Fees and Costs Payment, the
21 CLASS REPRESENTATIVE's Service Payments, the Settlement Administration Fees, the LWDA
22 payment described in Paragraph 67, and each individual Class Member's share of Employee
23 Payroll Taxes, and any other applicable withholdings required by law, and does not include
24 DEFENDANT's share of Employer Payroll Taxes. The Gross Settlement Amount has been agreed
25 to by CLASS REPRESENTATIVE and DEFENDANT based on the aggregation of the agreed-
26 upon settlement value of the Released Claims of the Class Members.

1 39. Tax Treatment of Payments to Participating Class Members. The parties agree to
2 allocate the settlement distributions to members of the class as 25% to wages and 75% to penalties
3 and interest. For the portion characterized as wages, normal Employee Payroll Taxes and
4 withholdings will be deducted pursuant to state and federal law. Other than paying the Employer
5 Payroll Taxes on the portion allocated to wages, DEFENDANT shall have no responsibility for the
6 tax treatment of the non-wage components of the settlement payments.

7 40. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
8 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
9 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
10 PARTY”) ACKNOWLEDGES AND AGREES THAT (i) NO PROVISION OF THIS
11 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
12 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
13 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
14 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
15 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
16 PART 10, AS AMENDED); (ii) THE ACKNOWLEDGING PARTY (A) HAS RELIED
17 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
18 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
19 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
20 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
21 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
22 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
23 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
24 ACKNOWLEDGING PARTY; AND (iii) NO ATTORNEY OR ADVISER TO ANY OTHER
25 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
26 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
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1 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
2 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
3 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
4 AGREEMENT.

5 41. PAGA Penalty Allocation. From the Gross Settlement Amount, Ten Thousand
6 Dollars and Zero Cents (\$10,000.00) shall be allocated as PAGA penalties. From this amount,
7 three-quarters (75%) (\$7,500.00) shall be paid to the LWDA, and the remaining one-quarter (25%)
8 (\$2,500.00) shall be distributed to the PAGA Subclass, as defined in Paragraph 53, below.

9 **IV. CLASS REPRESENTATIVE SERVICE PAYMENT**

10 42. As part of the Agreement, DEFENDANT agree not to oppose CLASS
11 REPRESENTATIVE's application to the Court for an individual Class Representative Service
12 Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to CLASS
13 REPRESENTATIVE who has served as a CLASS REPRESENTATIVE, in addition to any
14 payment he is otherwise entitled to as a Class Member, which is to be paid out of the Gross
15 Settlement Amount.

16 43. Should the Court approve a lesser amount for the Class Representative Service
17 Payment, the difference shall be added back to the Net Settlement Fund to be distributed to the
18 Participating Class Members. Any Court order awarding less than the amount sought by Class
19 Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement.

20 44. The Settlement Administrator will issue to the CLASS REPRESENTATIVE an IRS
21 Form 1099 reflecting the Class Representative Service Payment paid to him.

22 **V. ATTORNEYS' FEES AND COSTS**

23 45. As part of the Agreement, DEFENDANT agree not to oppose an application by
24 CLASS REPRESENTATIVE to the Court for Class Counsel fees in the amount of up to one-third
25 (1/3) of the Gross Settlement Amount (*i.e.*, One-Hundred Twenty-Five Thousand Dollars and Zero
26 Cents (\$125,000.00)), plus actual attorneys' costs and expenses not to exceed Fifteen Thousand
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1 Dollars and Zero Cents (\$15,000.00), upon proof provided to the Court.

2 46. Should the Court approve a lesser amount of Class Counsel Fees and Costs Payment
3 than what is sought by Class Counsel, the difference shall be added back to the Net Settlement
4 Fund to be distributed to the Participating Class Members. Any Court order awarding less than the
5 amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or
6 otherwise void the Settlement.

7 47. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099
8 reflecting the amount of attorneys' fees and costs awarded by the Court.

9 **VI.CLASS MEMBER DISTRIBUTION FORMULA**

10 48. After deducting the Class Representative Service Payments, the Class Counsel Fees
11 and Costs Payment, the PAGA payment to the LWDA and the Settlement Administration Fees
12 from the Gross Settlement Amount, the remaining balance shall constitute the Net Settlement Fund
13 which will be distributed as described in this Section VI.

14 49. DEFENDANT denies any liability or wrongdoing of any kind associated with the
15 claims alleged in the Litigation, including all allegations made in the Operative Complaint. Nothing
16 in the allocation formulas in this section shall be deemed an admission that any Class Member has
17 stronger or weaker claims than any other Class Member.

18 50. The Settlement Administrator will calculate each Participating Class Member's
19 number of workweeks and the total number of workweeks worked by all Participating Class
20 Members using the Class Data provided by DEFENDANT (as described in Paragraph 58). The
21 Settlement Administrator will determine the Individual Settlement Payment for each Participating
22 Class Member according to the following formulas:

23 51. **The Class.** The Settlement Administrator will calculate each Participating Class
24 Member's number of workweeks and the total number of workweeks worked by all Participating
25 Class Members using the Class Data provided by DEFENDANT (as described in Paragraph 58).
26 The Settlement Administrator will determine the Individual Settlement Payment for each
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1 Participating Class Member according to the following formula: Each Participating Class Member
2 will receive a proportionate share of the Net Settlement Fund that is equal to (i) the number of
3 workweeks he or she worked based on the Class Data, divided by (ii) the total number of
4 workweeks worked by all Participating Class Members based on the Class Data.

5 52. Once determined, each Individual Settlement Payment will be reduced by any
6 required legal deductions, including tax and other required withholdings, for each Participating
7 Class Member.

8 53. A Participating Class Member's receipt of an Individual Settlement Payment shall
9 not entitle him or her to additional compensation or benefits of any kind under any of
10 DEFENDANT' compensation or employee benefits plans.

11 54. **The PAGA Subclass.** From the Ten Thousand Dollars and Zero Cents
12 (\$10,000.00) allocated to PAGA penalties, one-quarter (25%) (\$2,500.00) shall be distributed to
13 the PAGA Subclass, which shall consist of all Class Members who were employed at any time
14 during the time period from October 20, 2019 through February 28, 2022 in the state of California
15 as non-exempt, hourly paid employees. Each Participating Class Member who is a member of the
16 PAGA Subclass will receive a proportionate share of money allocated to that subclass that is equal
17 to (i) the number of workweeks he or she worked during the time period from October 20, 2019
18 through February 28, 2022 or the date of Preliminary Approval of the Settlement (whichever comes
19 first), divided by (ii) the total number of workweeks worked by all Participating Class Members
20 who are members of the PAGA Subclass during the time period from October 20, 2019 through
21 February 28, 2022.

22 **VII. SETTLEMENT ADMINISTRATION**

23 55. **Settlement Administrator.** CLASS REPRESENTATIVE and DEFENDANT have
24 agreed to and will request that the Court appoint Simpluris as Settlement Administrator for this
25 Settlement.

26 56. **Class Counsel.** CLASS REPRESENTATIVE and DEFENDANT stipulate and
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1 agree to propose to the Court that David Yeremian & Associates, Inc. be appointed as Class
2 Counsel to carry out the duties described in this Agreement.

3 57. Stipulation to Conditional Certification. CLASS REPRESENTATIVE and
4 DEFENDANT stipulate, for settlement purposes only, that the Court may conditionally certify the
5 Class, as defined in this Joint Stipulation, as an opt-out class (the “**Class Stipulation**”). More
6 specifically, CLASS REPRESENTATIVE and DEFENDANT agree as part of the Joint Stipulation
7 that, for settlement purposes only, the legal requirements for an opt-out class are satisfied. This
8 conditional Class Stipulation is made solely for purposes of the Settlement. The Class Stipulation
9 is in no way an admission that class action certification is proper, and neither this Joint Stipulation
10 nor the Class Stipulation will be admissible in this or any other action or proceeding as evidence
11 either that (i) the claims advanced in the Litigation, or any other class, collective, or representative
12 action claims, should be certified, or that (ii) DEFENDANT or any of the Released Parties are
13 liable to the CLASS REPRESENTATIVE, the Class Members, or any other putative class
14 members.

15 58. Provision of Class Data to Settlement Administrator. Within fifteen (15) business
16 days from the date of Preliminary Approval of the Settlement, DEFENDANT will provide to the
17 Settlement Administrator each Class Member’s: (a) name; (b) last known address; (c) employment
18 dates during the Class Period, including: date of termination (if applicable); (d) total number of
19 workweeks worked from October 20, 2016 through February 28, 2022 or the date of Preliminary
20 Approval of the Settlement (whichever comes first); and (e) total number of workweeks worked
21 from October 20, 2019 through February 28, 2022 or the date of Preliminary Approval of the
22 Settlement (whichever comes first); and (f) Social Security Number (the “**Class Data**”). The Class
23 Data shall be based on DEFENDANT’ payroll and available business records in a format
24 acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the
25 Class Members’ addresses against those on file with the U.S. Postal Service’s National Change of
26 Address List. The Class Data provided to the Settlement Administrator will remain confidential
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1 and will not be used or disclosed to anyone, except as required by applicable tax authorities,
2 pursuant to DEFENDANT' express written consent, or by order of the Court.

3 **VIII. NOTICE AND CLASS MEMBER APPROVAL PROCESS**

4 59. Notice to Putative Class Members. Within ten (10) business days following the
5 Settlement Administrator's receipt of the Class Data, the Notice of Proposed Settlement ("Notice")
6 shall be sent by the Settlement Administrator to the Class Members, by first class mail. The Notice
7 will include, non-exclusively:

- 8 a. Contact information for Class Counsel;
- 9 b. The address for a website, maintained by the Settlement Administrator
10 or Class Counsel, that has links to the notice, motions for approval and
11 for attorneys' fees, and any other important documents in the case;
- 12 c. Instructions on how to access the case docket online or in person at the
13 court;
- 14 d. The date of the final approval hearing and clearly state that the date may
15 change without further notice to the class;
- 16 e. An advisement to Class Members to check the settlement website or the
17 Court's website to confirm that the hearing date has not been changed;
- 18 f. Information regarding the nature of the Litigation, including a summary
19 of the substance of the Settlement, the Class definitions, and the formula
20 used in calculating the Individual Settlement Payments;
- 21 g. Information about the ability to opt-out of the Settlement and the
22 process for doing so;
- 23 h. Information about the ability to object to the Settlement and the process
24 for doing;
- 25 i. The time period during which the Class Member worked during the
26 Class Period; and

1 j. The Class Member's estimated Individual Settlement Payment.

2 If the information listed on the Notice is disputed, the Class Member disputing the
3 information may produce information to the Settlement Administrator through the dispute process
4 described in Paragraph 64 below.

5 **IX. APPROVAL PROCESS**

6 60. Opt-In Not Required. Class Members are not required to submit any type of claim
7 form in order to receive settlement payments from the Net Settlement Fund. However, if a new
8 address is obtained by way of a returned Notice, then the Settlement Administrator shall promptly
9 forward the original Notice to the updated address via first-class regular U.S. Mail indicating on
10 the original Notice the date of such re-mailing. Where a Notice is returned as undeliverable, without
11 a forwarding address, the Settlement Administrator will perform a "skiptrace" search using the
12 National Change of Address database to obtain an updated address. CLASS REPRESENTATIVE
13 and DEFENDANT agree to cooperate with the Settlement Administrator to locate a more recent
14 address for Class Members where necessary. Notices will be re-mailed by the Settlement
15 Administrator to any Class Member for whom an updated address is located.

16 61. Opt-Out. Class Members who request exclusion from the Settlement in accordance
17 with the terms set forth in the Notice of Proposed Settlement will be deemed timely only if
18 postmarked on or before thirty (30) calendar days following the date of initial mailing of the Notice
19 by the Settlement Administrator ("**Exclusion Deadline**"). The date of the postmark on the return
20 mailing envelope shall be the exclusive means used to determine whether a request for exclusion
21 has been timely submitted.

22 62. Effect of Opt-Out. Class Members who validly and timely opt-out of the Class will
23 not be entitled to any recovery under the Settlement, will not be bound by the Settlement, and will
24 not have any right to object, appeal, or comment thereon, except that the opt-out provision shall
25 not affect their release and participation in the PAGA Settlement. Class Members who do not
26 submit a valid and timely request for exclusion shall be bound by all the terms of this Agreement
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1 and any final judgment or order in this Litigation, and shall be deemed to have waived all unstated
2 objections and opposition to the fairness, reasonableness, and adequacy of this Agreement. If 5%
3 or more of the Class Members opt-out, DEFENDANT shall have the right to rescind this Stipulation
4 and the parties' settlement in its sole and absolute discretion.

5 63. Opt-Out List. At the conclusion of the Notice period and at any time upon request,
6 the Settlement Administrator shall provide counsel for CLASS REPRESENTATIVE and
7 DEFENDANT with a complete list of all Class Members who have timely requested exclusion
8 from the Class.

9 64. Disputes Regarding Class Data. If a Class Member disputes the number of
10 workweeks listed on the Notice, the Class Member may produce evidence to the Settlement
11 Administrator indicating the number of workweeks contended to have been worked.
12 DEFENDANT' records will be presumed determinative, absent evidence to rebut DEFENDANT'
13 records, but the Settlement Administrator will evaluate the evidence submitted by the Class
14 Member and provide the evidence submitted to CLASS REPRESENTATIVE and DEFENDANT
15 who agree to meet and confer in good faith about the evidence to determine the Class Member's
16 actual number of workweeks and estimated Individual Settlement Payment. If CLASS
17 REPRESENTATIVE and DEFENDANT are unable to agree, they agree to submit the dispute to
18 the Settlement Administrator to render a final decision.

19 65. Objection to Settlement. Any Class Member who has not submitted a request for
20 exclusion may object to this Joint Stipulation, or any portion thereof, by filing a written objection
21 with the Court or by appearing at the Final Approval Hearing in person or through counsel of their
22 choice. Any written objection or supporting papers, if any, shall be mailed to the Settlement
23 Administrator at the address that is set forth in the Notice of Proposed Settlement, and the
24 Settlement Administrator shall provide the objection to CLASS REPRESENTATIVE' counsel and
25 Defense counsel within three (3) days of receipt, and CLASS REPRESENTATIVE' counsel shall
26 file the same with the Court within three (3) days of receipt from the Settlement Administrator. To
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1 be timely, all objections must be postmarked no later than thirty (30) calendar days following the
2 date of the first mailing of the Notice by the Settlement Administrator (“**Objection Deadline**”). A
3 written objection must contain the objecting person’s full name, current address, and include all
4 objections and the reasons therefore, and include any and all supporting papers (including, without
5 limitation, all briefs, written evidence, and declarations). A Class Member who desires to object
6 but who fails to comply with the objection procedure set forth herein shall be deemed not to have
7 objected.

8 66. Appearance at Final Approval Hearing. If a Participating Class Member wishes to
9 appear at the Final Approval Hearing and present her objection to the Court orally, she may do so.
10 Any Participating Class Member who files an objection remains eligible to receive monetary
11 compensation from the Settlement. CLASS REPRESENTATIVE and DEFENDANT shall not be
12 responsible for any fees, costs, or expenses incurred by any Class Member and/or her counsel
13 related to any objections to the Settlement and/or appeals arising therefrom.

14 67. Deadline for Cashing Settlement Checks. Participating Class Members shall have
15 180 days from the date checks are mailed by the Settlement Administrator to cash the checks
16 representing their Individual Settlement Payments. If any such checks mailed remain uncashed
17 after the expiration of this period, or an envelope mailed to a Participating Class Member is returned
18 and no forwarding address can be located for that individual after reasonable efforts have been
19 made, the funds from the uncashed checks shall be distributed by the Settlement Administrator to
20 the California State Controller’s Unclaimed Property division to be held pursuant to the Unclaimed
21 Property Law, California Civil Code § 1500 *et seq.* The Parties agree that this disposition results
22 in no “unpaid residue” under section 384 of the Code of Civil Procedure as all payments to the
23 Participating Class Members and PAGA Members will be paid out, whether or not these individuals
24 cash their Settlement checks. Any tax forms issued by the Settlement Administrator to the class
25 member who does not cash his/her check shall be voided and the employer’s share of payroll taxes
26 will be returned to DEFENDANT.

1 68. Effective Date of Settlement. The Settlement shall become effective when the
2 Settlement is considered as “Final.” For purposes of this Agreement, “Final” means: (i) in the event
3 that the Settlement has received final approval by the Court and there were no timely objections
4 filed or presented, or that any timely objections have been withdrawn, then the date of the Court’s
5 Order granting final approval of the Settlement; or, (ii) in the event that one or more timely
6 objections has/have been filed or presented and not withdrawn at the time of final approval, then
7 upon the passage of the applicable date for an objector to seek appellate review of the trial court’s
8 order of final approval of the Settlement, without a timely appeal having been filed; or, (iii) in the
9 event that a timely appeal of the court’s order of final approval has been filed, then when the
10 applicable appellate court has rendered a final decision or opinion affirming the Superior Court’s
11 final approval without material modification, and the applicable date for seeking further appellate
12 review has passed, or the date that any such Appeal has been either dismissed or withdrawn by the
13 appellant.

14 **X.DELIVERY OF FUNDS TO SETTLEMENT ADMINISTRATOR**

15 69. Within thirty (30) calendar days after the Settlement is considered “Final” as
16 described in Paragraph 68 above, DEFENDANT shall make a one-time deposit of the Gross
17 Settlement Amount (as defined in Paragraph 16) into a qualified settlement account to be
18 established by the Settlement Administrator. The Gross Settlement Amount shall be used to pay
19 the following, in amounts finally approved by the Court:

- 20 a. The Individual Settlement Payments and PAGA payments to all
21 Participating Class Members, as calculated by the Settlement
22 Administrator;
23 b. The Class Representative Service Payments;
24 c. The Settlement Administration Fees;
25 d. The PAGA payment to the LWDA; and,
26 e. Class Counsel Fees and Costs.

XI.DISTRIBTUION OF FUNDS

70. Within ten (10) business days after receipt of DEFENDANT' payment of the Gross Amount to fund the Settlement as provided in this Agreement, the Settlement Administrator shall do the following:

- a. Mail the Individual Settlement Payment and PAGA payment, if applicable, to each Class Member's last-known address, as determined from the Notice process;
- b. Disburse, by such means as Class Counsel may direct, the amount of the Class Representative Service Payments and Class Counsel Fees and Costs Payment;
- c. Calculate, withhold, and remit to applicable governmental agencies each employee's Employee Payroll Taxes, on the wage portion of the settlement payments to Participating Class Members in accordance with this Agreement;
- d. Calculate DEFENDANT' share of applicable Employer Payroll Taxes and notify DEFENDANT of that amount; and
- e. Mail the PAGA payment approved by the Court to the LWDA with the cover letter provided by Class Counsel.

XII.RELEASE OF CLAIMS

71. Participating Class Members' Release. CLASS REPRESENTATIVE and DEFENDANT desire to fully, finally, and forever settle, compromise, and discharge the Released Claims set forth in Paragraph 28. Each and every Participating Class Member, including the CLASS REPRESENTATIVE, hereby release, discharge, and agree to hold harmless DEFENDANT and all of the other Released Parties, and each of them, from any and all claims that were alleged in the Litigation or which could have been alleged based on the facts asserted in the Litigation, as described in Paragraph 28(a), up through and including the last day of the Class Period.

72. Scope of Class Members' Release. CLASS REPRESENTATIVE and

1 DEFENDANT intend that the Settlement described in this Agreement will release and preclude
2 any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other
3 action of any kind, by each and all of the Participating Class Members to obtain a recovery based
4 on, arising out of, and/or related to any and all of the Released Claims. The Class Members shall
5 be so notified in the Notice to the Class. This paragraph does not apply to any Class Member who
6 timely and validly opts out of the Settlement.

7 **XIII. RETENTION OF JURISDICTION**

8 73. CLASS REPRESENTATIVE and DEFENDANT stipulate that the Court may retain
9 jurisdiction over any further disputes relating to this Agreement, the implementation of the
10 Agreement, the interpretation of the Agreement or any of its terms, or further issues regarding the
11 claims in the Litigation, until the Settlement Administrator and CLASS REPRESENTATIVE and
12 DEFENDANT notify the Court that all issues have been resolved and the Settlement has been fully
13 effectuated. CLASS REPRESENTATIVE and DEFENDANT shall endeavor to give such notice
14 within 180 days from the Final Approval Order.

15 **XIV. GENERAL PROVISIONS**

16 74. Appointment of Class Counsel. For purposes of this Joint Stipulation and subject to
17 the Court's approval, CLASS REPRESENTATIVE and DEFENDANT hereby stipulate to the
18 appointment of Class Counsel as counsel for the Class and the effectuation of the Settlement
19 pursuant to this Joint Stipulation.

20 75. Settlement Administration Fees If Settlement Fails. If for any reason this Settlement
21 is not approved and does not become "Final," any Settlement Administration Fees incurred as a
22 result of administration of the failed Settlement shall be borne equally by CLASS
23 REPRESENTATIVE and DEFENDANT, unless otherwise specified in this Agreement.

24 76. No Prior Assignments. The Parties and their counsel represent, covenant, and
25 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
26 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
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1 action, cause of action or right herein released and discharged.

2 77. Interpretation. CLASS REPRESENTATIVE and DEFENDANT have had a full
3 opportunity to negotiate the terms and conditions of this Agreement, with the assistance of a neutral
4 mediator. Accordingly, CLASS REPRESENTATIVE and DEFENDANT expressly waive the
5 common-law and statutory rule of construction that ambiguities should be construed against the
6 drafter of an agreement. CLASS REPRESENTATIVE and DEFENDANT agree that the language
7 in this Agreement shall not be construed in favor or against any Party. CLASS
8 REPRESENTATIVE and DEFENDANT further agree, covenant, and represent that the language
9 in all parts of this Agreement shall be in all cases construed as a whole, according to its fair
10 meaning. Each term of this Agreement is contractual and not merely a recital.

11 78. Rescission. CLASS REPRESENTATIVE and DEFENDANT agree that if, at any
12 time before the Effective Date, any portion of the Released Claims, the Notice, and/or the
13 distribution provisions of this Agreement are determined to be illegal, invalid, or unenforceable,
14 then CLASS REPRESENTATIVE and DEFENDANT agree to meet and confer in order to attempt
15 to resolve outstanding issue(s) and to seek the help of Mediator Nikki Tolt to resolve any dispute
16 they are unable to resolve informally. If CLASS REPRESENTATIVE and DEFENDANT cannot
17 resolve such issue(s), this Agreement shall be rescindable at the option of either Party. The
18 rescinding party must rescind by written notice filed with the Court and served on counsel for the
19 opposing party within thirty (30) days after any order or written ruling that declares any such
20 portion to be illegal, invalid, or unenforceable. The rescinding party will be responsible for paying
21 any Settlement Administration Fees incurred as a result of administration of the failed Settlement.

22 79. Effect If No Final Approval. If the Court denies final approval of the Settlement,
23 then this Settlement shall become null and void. If the Settlement is voided through any of the
24 mechanisms described herein, CLASS REPRESENTATIVE and DEFENDANT will have no
25 further obligations under the Settlement, including any obligation by DEFENDANT to pay the
26 Gross Settlement Amount, or any amounts that otherwise would have been owed under this
27
28

1 Settlement.

2 80. Cooperation. CLASS REPRESENTATIVE and DEFENDANT agree to fully
3 cooperate with each other to accomplish the terms of this Agreement, including but not limited to,
4 executing such documents and to taking such action as may reasonably be necessary to implement
5 the terms of this Agreement. CLASS REPRESENTATIVE and DEFENDANT shall use their best
6 efforts, including all efforts contemplated by this Agreement and any other efforts that may become
7 necessary by order of the Court, or otherwise, to effectuate the terms of this Agreement. As soon
8 as practical after execution of this Agreement, Class Counsel shall, with the assistance and
9 cooperation of DEFENDANT and their counsel, take all reasonable and necessary steps to secure
10 the Court's final approval of this Agreement.

11 81. Dispute Resolution; Attorneys' Fees and Costs. Prior to instituting legal action to
12 enforce the provisions of this Agreement or to declare rights and/or obligations under this
13 Agreement, a party shall provide written notice to all parties and an opportunity to cure the alleged
14 deficiencies, and CLASS REPRESENTATIVE and DEFENDANT agree to seek the help of
15 Mediator Michael Loeb to resolve any dispute they are unable to resolve informally. During this
16 period, CLASS REPRESENTATIVE and DEFENDANT shall bear their own attorneys' fees and
17 costs. If either DEFENDANT or CLASS REPRESENTATIVE, the signatories to this Agreement,
18 institute a legal action or other proceeding against any other party to enforce the provisions of this
19 Agreement or to declare rights and/or obligations under this Agreement, the successful party shall
20 be entitled to recover from the unsuccessful party reasonable attorneys' fees and costs at the Court's
21 discretion. This provision shall not apply to any legal action or other proceeding instituted by any
22 person or entity other than CLASS REPRESENTATIVE or DEFENDANT.

23 82. Notice Requirements. Unless otherwise specifically provided herein, all notices,
24 demands, or other communications given hereunder shall be in writing and shall be deemed to have
25 been duly given as of the fifth business day after mailing by United States registered or certified
26 mail, return receipt requested, addressed as follows:

To CLASS REPRESENTATIVE and the Class:

DAVID YEREMIAN & ASSOCIATES, INC.

David Yeremian (SBN 226337)
david@yeremianlaw.com
Roman Shkodnik (SBN 285152)
roman@yeremianlaw.com
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

To DEFENDANT:

HELENE WASSERMAN, Bar No. 130134
hwasserman@littler.com
DAVID S. MAOZ, Bar No. 233857
dmaoz@littler.com
LITTLER MENDELSON, P.C.
2049 Century Park East
5th Floor
Los Angeles, CA 90067.3107
Telephone: 310.553.0308
Fax No.: 310.553.5583

83. Entire Agreement. This Joint Stipulation constitutes the entire agreement between CLASS REPRESENTATIVE and DEFENDANT and their respective counsel relating to the Settlement, this Joint Stipulation, and the transactions contemplated thereby. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

84. Notice to Class Members. Counsel for CLASS REPRESENTATIVE and DEFENDANT agree that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Agreement. The Notice of Proposed

1 Settlement, attached as **Exhibit A** hereto, will advise all Class Members of the binding nature of the
2 release, and the release shall have the same force and effect as if this Agreement were executed by
3 each member of the Class.

4 85. Warranty of No Prior Assignment. CLASS REPRESENTATIVE and DEFENDANT
5 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
6 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
7 liability, claim, demand, action, cause of action, or rights herein released and discharged.

8 86. No Modification by Extrinsic Evidence. With respect to the subject matter hereof,
9 except this Agreement, CLASS REPRESENTATIVE and DEFENDANT acknowledge that no
10 representations, statements, or promises made by the other party, or by their respective agents or
11 attorneys, have been relied upon in entering into this Agreement. CLASS REPRESENTATIVE and
12 DEFENDANT explicitly recognize California Civil Code section 1625 and California Code of Civil
13 Procedure section 1856(a), which provide that a written agreement is to be construed according to
14 its terms, and may not be varied or contradicted by extrinsic evidence, and agree that no such
15 extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this
16 Agreement.

17 87. Modification in Writing. This Agreement may be modified or amended only if such
18 modification or amendment is agreed to in writing and signed by the duly authorized representatives
19 of the parties hereto, and approved by the Court which writing shall expressly state the intent of the
20 parties to modify this Agreement.

21 88. Enforceability. If the Court finds any material provision of this Agreement to be
22 unenforceable or invalid, then this Agreement shall become voidable. Notwithstanding any other
23 provision of this Agreement, no distributions shall be required until the enforceability or validity of
24 this Agreement has been finally determined.

1 Settlement, attached as **Exhibit A** hereto, will advise all Class Members of the binding nature of the
2 release, and the release shall have the same force and effect as if this Agreement were executed by
3 each member of the Class.

4 85. Warranty of No Prior Assignment. CLASS REPRESENTATIVE and DEFENDANT
5 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
6 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
7 liability, claim, demand, action, cause of action, or rights herein released and discharged.

8 86. No Modification by Extrinsic Evidence. With respect to the subject matter hereof,
9 except this Agreement, CLASS REPRESENTATIVE and DEFENDANT acknowledge that no
10 representations, statements, or promises made by the other party, or by their respective agents or
11 attorneys, have been relied upon in entering into this Agreement. CLASS REPRESENTATIVE and
12 DEFENDANT explicitly recognize California Civil Code section 1625 and California Code of Civil
13 Procedure section 1856(a), which provide that a written agreement is to be construed according to
14 its terms, and may not be varied or contradicted by extrinsic evidence, and agree that no such
15 extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this
16 Agreement.

17 87. Modification in Writing. This Agreement may be modified or amended only if such
18 modification or amendment is agreed to in writing and signed by the duly authorized representatives
19 of the parties hereto, and approved by the Court which writing shall expressly state the intent of the
20 parties to modify this Agreement.

21 88. Enforceability. If the Court finds any material provision of this Agreement to be
22 unenforceable or invalid, then this Agreement shall become voidable. Notwithstanding any other
23 provision of this Agreement, no distributions shall be required until the enforceability or validity of
24 this Agreement has been finally determined.

89. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, assigns, executors, administrators, successors, subsidiaries, divisions and affiliated corporations and partnerships, past and present, and trustees, directors, officers, shareholders, partners, agents and employees, past and present, of CLASS REPRESENTATIVE, Participating Class Members, DEFENDANT, and the Released Parties.

90. Counterparts. This Agreement may be executed in counterparts and/or electronic and/or facsimile signatures, and when each party has signed and delivered at least one such counterpart, electronic and/or facsimile signature, each said signature shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Joint Stipulation, which shall be binding upon and effective as to all parties.

91. Governing Law. This Agreement shall be subject to, governed by, construed, enforced and administered in accordance with the laws of the State of California, both in its procedural and substantive aspects.

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date(s) indicated on the lines below.

Dated: March 22, 2022

John Pehkonen, on behalf of herself and all others similarly situated

DocuSigned by:
By: 
4840F1B89E4C4D6
John Pehkonen

1 Dated: March 29, 2022



2 By: Alan Sikarskie
3 For: BUREAU VERITAS
4 COMMODITIES AND TRADE, INC. fka
5 INSPECTORATE AMERICAN
6 CORPORATION

7 APPROVED AS TO FORM:

8 Dated: March 22, 2022

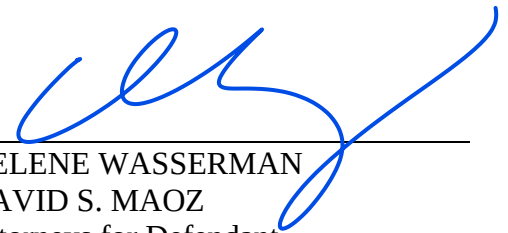
9 DAVID YEREMIAN & ASSOCIATES, INC.

10 By: _____
11 DAVID YEREMIAN
12 Attorneys for PLAINTIFF

13 APPROVED AS TO FORM:

14 Dated: March 29, 2022

15 LITTLER MENDELSON, P.C.

16 By: 
17 HELENE WASSERMAN
18 DAVID S. MAOZ
19 Attorneys for Defendant

1 Dated: March 29, 2022

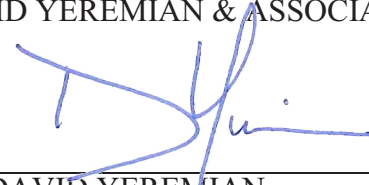


2 By: Alan Sikarskie
3 For: BUREAU VERITAS
4 COMMODITIES AND TRADE, INC. fka
5 INSPECTORATE AMERICAN
6 CORPORATION

7 APPROVED AS TO FORM:

8 Dated: March 22, 2022

9 DAVID YEREMIAN & ASSOCIATES, INC.



10 By: DAVID YEREMIAN
11 Attorneys for PLAINTIFF

12 APPROVED AS TO FORM:

13 Dated: March ___, 2022

14 LITTLER MENDELSON, P.C.

15 By: _____
16 HELENE WASSERMAN
17 DAVID S. MAOZ
18 Attorneys for Defendant
19
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21
22
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25
26
27
28

1 Dated: March 29, 2022



2 By: Alan Sikarskie
3 For: BUREAU VERITAS
4 COMMODITIES AND TRADE, INC. fka
5 INSPECTORATE AMERICAN
6 CORPORATION

7 APPROVED AS TO FORM:

8 Dated: March 22, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

9
10 By: _____
11 DAVID YEREMIAN
12 Attorneys for PLAINTIFF

13 APPROVED AS TO FORM:

14 Dated: March 29, 2022

LITTLER MENDELSON, P.C.

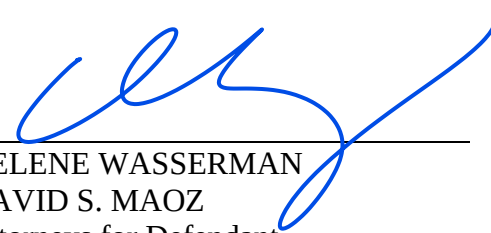
15
16
17 By: 
18 HELENE WASSERMAN
19 DAVID S. MAOZ
20 Attorneys for Defendant

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL HEARING

Pehkonen v. Bureau Veritas Commodities And Trade, Inc. fka Inspectorate American Corporation
(County of Los Angeles, California Superior Court Case Nos. 20STCV40104 and 20STCV49152)

As a current or former non-exempt California employee of Bureau Veritas Commodities and Trade, Inc. fka Inspectorate American Corporation you may be entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of Bureau Veritas Commodities and Trade, Inc. fka Inspectorate American Corporation (“Defendant”) shows you are a “Class Member,” and therefore entitled to a payment from this class action settlement. Class Members are all persons who are currently or formerly employed by Defendant, either directly or through any affiliate, staffing agency, or professional employer organization, as non-exempt employees in the State of California any time from October 20, 2016 until February 28, 2022 (“Class Period”).

The settlement resolves a class action Lawsuits and representative action Lawsuits entitled *Pehkonen v. Bureau Veritas Commodities And Trade, Inc. fka Inspectorate American Corporation*, Case Nos. 20STCV40104 and 20STCV49152 (the “Lawsuits”). Both Lawsuits were filed in the Los Angeles Superior Court in Los Angeles County in the State of California.

The Lawsuits contain claims against Defendant for: (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) meal period violations; (4) rest break violations; (5) failure to keep required payroll records; (6) violation of Labor Code section 226(a); (7) penalties pursuant to Labor Code section 203; and, (8) violation of Business & Professions Code sections 17200, *et seq.* Based on these alleged Labor Code violations, Plaintiff also seek penalties under the California Labor Code Private Attorney Generals Act (“PAGA”). (The Lawsuits, including the Class Action Lawsuit and PAGA Lawsuit may collectively be referred to as the “Lawsuits” or the “Litigation.”)

On [REDACTED], the Los Angeles Superior Court granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuits. Defendant vigorously deny the claims in the Lawsuits and contend that they fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuits.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuits. If you worked from October 20, 2019 through February 28, 2022 ("PAGA Period") as a non-exempt employee of Defendant, directly or through any affiliate, staffing agency, or professional employer organization, as well,

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

	then you will be deemed an “Aggrieved Employee” and you will still receive your share of the proceeds available from the settlement of the PAGA Released Claims, defined below, (your “Individual PAGA Payment”) regardless of whether you opt out of the class settlement.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Simpluris, about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval Hearing scheduled for [DATE AND TIME] in Department 12 of the Spring Street Courthouse of Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012.

The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [REDACTED] .m. on [REDACTED], in the Spring Street Courthouse of Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012 in Department 12. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendant’s records show that you currently work, or previously worked, for Defendant, either directly or through an affiliate, staffing agency, or professional employer organization, as a non-exempt, hourly-paid employee at some point during the Class Period. You were sent this Class Notice because you have a right to know about a proposed settlement of a class and representative action Lawsuits, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuits, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

What Is This Case About?

John Pehkonen was a non-exempt employee of Defendant. He is the “Plaintiff” in this case and is suing on behalf of himself and Class Members for Defendant’s alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or associated premium compensation, failure to provide rest breaks or associated premium compensation, failure to pay all wages owed upon termination or resignation from employment, failure to provide accurate itemized wage statements, failure to maintain payroll records, and failure to timely pay final wages upon separation from employment. Based on these and other alleged Labor Code violations, Plaintiff also seek to recover penalties under the California Labor Code Private Attorney Generals Act.

Defendant denies all of the allegations made by Plaintiff and denies that it violated any law. The Court has made no ruling on the merits of Plaintiff’s claims. The Court has only preliminarily approved this class action settlement. The Court will decide whether to give final approval to the Settlement at the Final Approval Hearing.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Summary of the Settlement Terms

Plaintiff and Defendant have agreed to settle this case on behalf of themselves, Class Members, and Aggrieved Employees for the Gross Settlement Amount of Three Hundred Seventy Five Thousand Dollars and Zero Cents (\$375,000.00), which shall be paid by Defendant. The Gross Settlement Amount includes: (1) Administration Costs up to \$5,000.00; (2) a service payment of up to \$7,500.00 to Plaintiff for his time and effort in pursuing this case and in exchange for a broader release of claims against Defendant; (3) one-third of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, shall amount to \$125,000.00; (4) up to \$15,000.00 in litigation costs to Class Counsel, according to proof; and (5) payment allocated to PAGA penalties in the amount of \$10,000.00, of which 75% (or \$7,500.00) will be paid to the California Labor and Workforce Development Agency (“LWDA”) and 25% (\$2,500.00) will be distributed to Aggrieved Employees. After deducting these sums, a total of approximately not less than \$210,000.00 will be available for distribution to Class Members (“Net Settlement Amount”), and \$2,500.00 will be available for distribution to Aggrieved Employees.

Distribution to Class Members

Class Members who do not opt out will receive a *pro rata* payment of the Net Settlement Amount based on the number of verified actual weeks worked by Class Members for Defendant, either directly or through an affiliate, staffing agency, or professional employer organization, in California during the Class Period (“Eligible Workweeks”). Specifically, Class Members’ payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (Individual’s Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Class Members who worked during the PAGA Period (*i.e.*, Aggrieved Employees) will receive a *pro rata* share of the \$2,500.00 allocated as PAGA penalties, whether or not they opt out, based on the number of Eligible Workweeks worked by each Aggrieved Employee during the PAGA Period.

Defendant’s records indicate that you worked [Eligible Workweeks] as a non-exempt employee in California during the Class Period and [Eligible Workweeks] during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award] and your estimated payment as an Aggrieved Employee would be [\$Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

Tax Reporting

100% of the payments for PAGA penalties to Aggrieved Employees will be allocated as penalties reported on IRS Form 1099. 25% of each Settlement Payment to Class Members who do not opt out will be allocated as wages and reported on an IRS Form W-2, and 75% will be allocated as penalties and interest reported on IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

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Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the entire release in the settlement and receive a your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an Aggrieved Employee. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment(s) set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Class Released Claims he or she may have or had upon final approval of this Settlement and payment by Defendant to the Settlement Administrator.

“Released Claims” refers to any and all claims against DEFENDANT, its respective past, present, and future parents, subsidiaries, affiliates, predecessors or successors in interest, or the officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, re-insurers, of any of them, that were alleged in the Litigation or which could have been alleged based on the facts asserted in the Litigation. These claims include, but are not limited to: (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) meal period violations; (4) rest break violations; (5) failure to keep required payroll records; (6) violation of Labor Code section 226(a); (7) penalties pursuant to Labor Code section 203; and, (8) violation of Business & Professions Code sections 17200, *et seq.*, and any other potential claims based on the foregoing facts and claims; and any other applicable provisions of state or federal law, including the applicable IWC wage order. (“Class Released Claims”).

For Aggrieved Employees, the release includes, for the duration of the PAGA Period, claims that were pled in the action and were alleged in the PAGA Notice, or that could have been plead based on the facts alleged in the Litigation and were also alleged in the PAGA Notice (“PAGA Released Claims” and, collectively with Class Released Claims, “Released Claims”).

“Released Parties” shall mean: (a) Defendant; (b) Defendant’s respective past, present, and future parents, subsidiaries, affiliates, divisions, fiduciaries, predecessors, successors, and assigns; and (c) the past, present, and future shareholders, directors, owners, officers, directors, agents, representatives, employees, attorneys, insurers, and the predecessors, successors, and assigns of any of the foregoing.

Option 2 – Opt Out of the Settlement

If you do not wish to receive your Individual Settlement Payment or release the Class Released Claims, you may exclude yourself by submitting a written request to be excluded from the Class. The written request for exclusion must include your name, your Social Security Number, and the following statement or something to its effect: “Please exclude me from the Settlement Class in the *Pehkonen v. Bureau Veritas Commodities And Trade, Inc. fka Inspectorate American Corporation* matter”. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail to the address below.

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves the settlement, then even if you

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

request exclusion from the settlement, if you are an Aggrieved Employee, you will still receive your Individual PAGA Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Option 3 – *File an Objection to the Settlement*

If you wish to object to the Settlement, you may file an objection in writing stating why you object to the Settlement. Your written objection must provide your full name, your current address, all objections and reasons, including any and all supporting papers, as to why you believe that the Court should not approve the Settlement. Your written objection must be mailed the Administrator no later than [RESPONSE DEADLINE]. Please note that you cannot both object to the Settlement and exclude yourself. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Final Approval Hearing

You may, if you wish, also appear at the Final Approval Hearing set for [REDACTED] at [REDACTED].m. in the Spring Street Courthouse of Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012 in Department 12 and orally object to the Settlement, discuss your written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing. If you wish to appear to the Final Approval hearing then you must review the COVID-19 Courthouse Protocol at <https://www.lacourt.org/newsmedia/uploads/1420216241552562021-GEN-023-00AdministrativeOrderofPJreFacialCoveringsandSocialDistancing062421.pdf>. You may attend the hearing telephonically or by videoconference through LACourtConnect. You will need to access the LACourtConnect website (www.lacourt.org/lacc) to schedule your remote appearance.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit [www.\[REDACTED\].com](http://www.[REDACTED].com), call the Settlement Administrator at [PHONE NUMBER] or contact Class Counsel:

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
Roman Shkodnik (SBN 285152)
roman@yeremianlaw.com
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Spring Street Courthouse of Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, during regular business hours of each court day.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANT, OR DEFENDANT'S ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

EXHIBIT 2

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
Roman Shkodnik (SBN 285152)
roman@yeremianlaw.com
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

UNITED EMPLOYEES LAW GROUP, PC
Walter Haines (SBN 71075)
whaines@uelg.com
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (310) 652-2242

Attorneys for Plaintiff JOHN PEHKONEN,
on behalf of himself and others similarly situated

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

JOHN PEHKONEN, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

BUREAU VERITAS COMMODITIES AND
TRADE, INC. fka INSPECTORATE
AMERICAN CORPORATION, a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20STCV40104

CLASS ACTION

Assigned for All Purposes To:
Hon. Carolyn Kuhl
Dept.: 12

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and 1174.5
6. Violation of Labor Code § 226(a)
7. Penalties Pursuant to Labor Code § 203;
8. Violation of Business & Professions Code § 17200 et seq.
9. Penalties Pursuant to Labor Code § 2699,

DEMAND FOR JURY TRIAL

1 Plaintiff JOHN PEHKONEN, (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants BUREAU
8 VERITAS COMMODITIES AND TRADE, INC. fka INSPECTORATE AMERICAN
9 CORPORATION, and DOES 1 through 50 (all defendants being collectively referred to herein as
10 “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of
11 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and
12 California Business & Professions Code, and seeks redress therefore.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in Torrance, California. Plaintiff and the other
16 Class members worked for Defendants in Los Angeles County, throughout California and
17 consistently worked at Defendants’ behest without being paid all wages due. More specifically,
18 Plaintiff and the other similarly situated Class members were employed by Defendants and
19 worked at Defendants’ offices and other facilities where the conduct giving rise to the allegations
20 in this Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by
21 Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same
22 policies and practices, and (3) endured similar violations at the hands of Defendants as the other
23 Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while remaining under Defendants’ control before and after being on the clock for their daily work
26 shift, and Defendants further failed to accurately record time worked by Plaintiff and the
27 Employee Class members by rounding hours worked to the nearest quarter hour to their detriment.
28 Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and provided

1 them with inaccurate wage statements that prevented Plaintiff and the Class from learning of these
2 unlawful pay practices. Defendants also failed to provide Plaintiff and the Class with lawful meal
3 and rest periods, as employees were not provided with the opportunity to take timely,
4 uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

5 **THE PARTIES**

6 **A. The Plaintiff**

7 4. Plaintiff JOHN PEHKONEN has resided in California and during the time period
8 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
9 the State of California at Defendants' facilities and offices in Torrance, California.

10 **B. The Defendants**

11 Defendant BUREAU VERITAS COMMODITIES AND TRADE, INC. FKA
12 INSPECTORATE AMERICAN CORPORATION ("BVCT") is a Delaware corporation with its
13 principle executive office in Fort Lauderdale, Florida, and has been listed as the employer on the
14 wage statements issued to Plaintiff and Plaintiff's personnel file during the relevant time period.
15 BVCT lists a Florida address with the California Secretary of State, but upon information and
16 belief, employs Plaintiff and Employees in Los Angeles County, including at Defendants' offices
17 and facilities in Torrance, California, and throughout California and conducts business throughout
18 California.

19 5. The true names and capacities, whether individual, corporate, associate, or
20 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
21 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
22 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
23 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
24 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
25 this Complaint to reflect the true names and capacities of the Defendants designated herein as
26 Does 1 through 50 when their identities become known.

27 6. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
28 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried

1 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
2 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
3 all respects as the employers or joint employers of Employees. Defendants, and each of them,
4 exercised control over the wages, hours or working conditions of Employees, or suffered or
5 permitted Employees to work, or engaged, thereby creating a common law employment
6 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
7 employed Employees.

8 **JURISDICTION AND VENUE**

9 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
11 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
12 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
13 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
14 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
15 County and Defendants maintain and operate company offices and facilities in Los Angeles
16 County, and employ Plaintiff and other Class members in Los Angeles County and throughout
17 California.

18 **FACTUAL BACKGROUND**

19 8. The Employees who comprise the Class and Collective, including Plaintiff, are
20 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
21 Employees who work in nonexempt positions at the direction of Defendants in the State of
22 California. Plaintiff and the Class members were either not paid by Defendants for all hours
23 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
24 Plaintiff contends that Defendants failed to pay Plaintiff and the Class members all wages due and
25 owing, including by unlawfully rounding to their detriment, failed to provide meal and rest breaks,
26 and failed to furnish accurate wage statements, all in violation of various provisions of the
27 California Labor Code and applicable Wage Orders.

28 ///

1 9. During the course of Plaintiff and the Class members' employment with
2 Defendants, they were not paid all wages they were owed, including for all work performed and
3 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
4 labor budgets low. Specifically, the timekeeping system thus permitted Defendants to record
5 clock in and clock out times to the real-time minute. However, rather than paying Plaintiff and
6 the Class members for all hours and minutes they actually worked, Defendants followed a
7 uniform policy and practice of rounding all time entries to the nearest quarter hour (i.e., to the
8 nearest 15 minute time increment), and generally did so to the detriment of the Employees, and
9 these unlawfully rounded time entries were inputted into Defendants' payroll system from which
10 wage statements and payroll checks were created. Defendants did so with the ostensible intent of
11 paying Class members only for the hours they were scheduled to work, rather than the hours they
12 were actually under Defendants' control. Plaintiff contends this policy is not neutral and results,
13 over time, to the detriment of the Class members by systematically undercompensating them.

14 10. Defendants had also either failed to maintain timekeeping records for Plaintiff that
15 would permit him to discover the nature and extent of Defendants' unlawful rounding or has
16 refused to produce them to Plaintiff in response to him timely request to be provided with them.

17 11. As a matter of uniform Company policy, Plaintiff and the Class members were
18 required to work during their meal and rest breaks which were not compensated by Defendants in
19 violation of the California Labor Code. Plaintiff and the Class members were also not paid
20 regular wages and overtime for the time they were required to comply with other requirements
21 imposed upon them, which they had to complete while working through their meal and rest
22 breaks and without compensation. As a result Plaintiff and the Class members worked shifts over
23 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
24 appropriate overtime rate for all such hours, including by being required to perform work duties
25 and tasks without pay and while off-the-clock due to Defendants' unlawful rounding. As a result,
26 Plaintiff and the Class members worked substantial overtime hours during their employment with
27 Defendants for which they were not compensated, in violation of the California Labor Code,
28 applicable IWC Wage Orders.

1 12. As a result of the above described unlawful rounding, the daily work demands and
2 pressures to work through breaks, and the other wage violations they endured at Defendants'
3 hands, Plaintiff and the Class members were not properly paid for all wages earned and for all
4 wages owed to them by Defendants, including when working more than eight (8) hours in any
5 given day and/or more than forty (40) hours in any given week. As a result of Defendants'
6 unlawful policies and practices, Plaintiff and Class members incurred overtime hours worked for
7 which they were not adequately and completely compensated. To the extent applicable,
8 Defendants also failed to pay Plaintiff and the Class members at an overtime rate of 1.5 times the
9 regular rate for the first eight hours of the seventh consecutive work day in a week and overtime
10 payments at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh
11 consecutive work day, as required under the Labor Code, applicable IWC Wage Orders.

12 13. Therefore, from at least four (4) years prior to the filing of this lawsuit and
13 continuing to the present, Defendants had a consistent policy or practice of failing to pay
14 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
15 by California Law.

16 14. Additionally from at least four (4) years prior to the filing of this lawsuit and
17 continuing to the present, Defendants had a consistent policy or practice of failing to pay
18 Employees overtime compensation at premium overtime rates for all hours worked in excess of
19 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
20 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
21 sections of IWC Wage Orders.

22 15. Additionally from at least four (4) years prior to the filing of this lawsuit and
23 continuing to the present, Defendants have regularly required Employees to work shifts in excess
24 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
25 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
26 periods of not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one
27 hour of wages at each Employee's effective hourly rate of pay, for each meal period that
28 Defendants failed to provide or deficiently provided.

1 16. From at least four (4) years prior to the filing of this lawsuit and continuing to the
2 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
3 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
4 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
5 provided or were deficiently provided.

6 17. Additionally from at least three (3) years prior to the filing of this lawsuit, and
7 continuing to the present, Defendants have consistently failed to keep accurate time and wage
8 records as required by California wage-and-hour laws.

9 18. Additionally from at least four (4) years prior to the filing of this lawsuit, and
10 continuing to the present, Defendants have consistently failed to provide Employees with timely,
11 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

12 19. Additionally from at least four (4) years prior to filing this lawsuit and continuing
13 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
14 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
15 required by California wage-and-hour laws.

16 20. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
17 Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
18 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699.

19 21. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
20 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
21 enjoyed from their violations of Labor Code.

22 **CLASS ALLEGATIONS**

23 22. Plaintiff brings this class action on behalf of himself an all others similarly situated
24 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
25 all individuals employed by Defendants, at any time within four (4) years of the filing of this
26 lawsuit, and have been employed by Defendants within the State of California.

27 23. Further, plaintiff seeks to represent the following Subclasses composed of and
28 defined as follows:

- 1 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
2 compensated for all hours worked for Defendants at the applicable minimum wage.
- 3 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
4 compensated for all hours worked for Defendants at the required rates of pay, including for all
5 hours worked in excess of eight in a day and/or forty in a week.
- 6 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
7 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty
8 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 9 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
10 Defendants' policy and/or practice of failing to authorize and permit Employees to take
11 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
12 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 13 e. Subclass 5. Payroll Records Subclass. All Class members who were subject to
14 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
15 by California wage-and-hour laws.
- 16 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
17 applicable limitations period, were not provided with accurate itemized wage statements.
- 18 g. Subclass 7. Termination Pay Subclass. All Class members who, within the
19 applicable limitations period, either voluntarily or involuntarily separated from their employment
20 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
21 termination.
- 22 h. Subclass 8. UCL Subclass. All Class members who are owed restitution as a
23 result of Defendants' business acts and practices, to the extent such acts and practices are found to
24 be unlawful, deceptive, and/or unfair.

25 24. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
26 modify the class description with greater particularity or further division into subclasses or
27 limitation to particular issues.

28 25. This action has been brought and may properly be maintained as a class action

under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

26. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, employed more than 100 individuals were employed by Defendant's within the State of California.

27. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all class members.

B. Commonality

28. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a);
- g. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay

wages and compensation due and owing at the time of termination of employment;

i. Whether Defendants violated Business and Professions Code § 17200 et seq.;

j. Whether Defendants are liable for penalties under Labor Code § 2699, et seq.; and

k. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 et seq.

C. Typicality

29. The claims of the named plaintiff are typical of those of the other Employees.

Employees all sustained injuries and damages arising out of and caused by Defendant's common course of conducts in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

30. Plaintiff will fairly and adequately represent and protect the interest of Employees.

Counsel who represents Employees are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

31. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

32. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

33. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

1 34. Defendants failed to pay Employees minimum wages for all hours worked.
2 Defendants had a consistent policy of misstating Employees time records and failing to pay
3 Employees for all hours worked. Employees would work hours and not receive wages, including
4 as alleged above in connection with working during meal breaks, and regarding rounding of
5 timekeeping entries. Defendants, and each of them, have also intentionally and improperly
6 rounded, changed, adjusted and/or modified Employee hours, while benefiting Defendants.
7 During the relevant time period, Defendants thus regularly failed to pay minimum wages to
8 Plaintiff and the Class members, including by unlawful rounding to their detriment. Additionally,
9 Defendants had a consistent policy of failing to pay Employees for hours worked during alleged
10 meal periods for which Employees were consistently denied, as also addressed herein.
11 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
12 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
13 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
14 wage pay.

15 35. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
16 states:

17 The minimum wage for employees fixed by the commission is the
18 minimum wage to be paid to employees, and the payment of a less
19 wage than the minimum so fixed is unlawful.

20 36. The applicable minimum wages fixed by the commission for work during the
21 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
22 therefore entitled to double the minimum wage during the relevant period.

23 37. The minimum wage provisions of California Labor Code are enforceable by private
24 civil action pursuant to California Labor Code § 1194(a) which states:

25 Notwithstanding any agreement to work for a lesser wage, any
26 employee receiving less than the legal minimum wage or the legal
27 overtime compensation applicable to the employee is entitled to
28 recover in a civil action the unpaid balance of the full amount of
 this minimum wage or overtime compensation, including interest
 thereon, reasonable attorney's fees and costs of suit.

38. As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission.

39. California Labor Code § 1194.2 also provides for the following remedies:

In any action under Section 1194 . . . to recover wages because of the payment of a wage less than the minimum wages fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

40. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

41. Wherefore, 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).

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

42. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

43. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked. Defendants consistently improperly rounded down, changed, adjusted Employees time records, paid Employees less than their time records showed as demonstrated by Employees' timesheets which reveal little variance between the

1 hours worked by employees on a daily basis.

2 44. Defendants' failure to pay compensation in a timely fashion also constituted a
3 violation of California Labor Code § 204, which requires that all wages shall be paid
4 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
5 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
6 and overtime compensation earned by Employees. Each such failure to make a timely payment of
7 compensation to Employees constitutes a separate violation of California Labor Code § 204.

8 45. Employees have been damaged by these violations of California Labor Code §§
9 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

10 46. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
11 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
12 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
13 reasonable attorneys' fees and costs.

14 **THIRD CAUSE OF ACTION**

15 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

16 **(Against All Defendants)**

17 47. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
18 full herein.

19 48. Employees regularly worked shifts greater than five (5) hours and greater than ten
20 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
21 more than five (5) hours without providing him or her with a meal period of not less than thirty
22 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
23 meal period of not less than thirty (30) minutes.

24 49. Defendants failed to provide Employees with meal periods as required under the
25 Labor Code. Employees were consistently required to work through their meal periods which they
26 were consistently denied. Employees were also required to take meal periods after working well
27 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
28 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal

1 period as required by law.

2 50. Moreover, Defendants failed to compensate Employees for each meal period not
3 provided or inadequately provided, as required under Labor Code § 226.7.

4 51. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
5 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
6 period not provided or deficiently provided, a sum to be proven at trial.

7 **FOURTH CAUSE OF ACTION**

8 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

9 **(Against All Defendants)**

10 52. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 53. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
13 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
14 not less than ten (10) minutes for each consecutive four (4) hour shift.

15 54. Defendants failed to provide Employees with timely rest breaks of not less than ten
16 (10) minutes for each consecutive four (4) hour shift.

17 55. Moreover, Defendants did not compensate Employees with an additional hour of
18 pay at each Employee's effective hourly rate for each day that Defendants failed to provide them
19 with adequate rest breaks, as required under Labor Code § 226.7.

20 56. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
21 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
22 worked without the required rest breaks, a sum to be proven at trial.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

25 **AND 1174.5**

26 **(Against All Defendants)**

27 57. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
28 full herein.

1 58. California Labor Code § 1174 requires that all employers shall keep accurate time
2 and wage records for all employees. California Labor Code § 1174.5 further requires that any
3 employee suffering injury due to a willful violation of the aforementioned obligations may seek
4 damages, including civil penalties, from the employer.

5 59. During the course of Plaintiff's and Employees' employment, Defendants
6 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
7 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
8 overtime, and premium pay as discussed above.

9 60. Accordingly, Defendants are liable for civil penalties pursuant to the California
10 Labor Code §§ 1174.5, for the three (3) years prior to the filing of this Complaint.

11 **SIXTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 226(a)**
13 **(Against All Defendants)**

14 61. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 62. California Labor Code § 226(a) requires an employer to furnish each of his or her
17 employees with an accurate, itemized statement in writing showing the gross and net earnings,
18 total hours worked, and the corresponding number of hours worked at each hourly rate; these
19 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
20 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
21 statements may be given to the employee separately from the payment of wages; in either case the
22 employer must give the employee these statements twice a month or each time wages are paid.

23 63. Defendants failed to provide Employees with accurate itemized wage statements in
24 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
25 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
26 and rest periods, failed to account for actual hours worked, and reflected the incorrect hours
27 worked due to the rounding all of which Defendants knew or reasonably should have known were
28 owed to Employees, as alleged hereinabove.

1 64. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
2 Employees suffered injuries, including among other things confusion over whether they received
3 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
4 forcing them to make mathematical computations to analyze whether the wages paid in fact
5 compensated them correctly for all hours worked.

6 65. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
7 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
8 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
9 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
10 award of costs and reasonable attorneys' fees.

11 **SEVENTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 203**
13 **(Against All Defendants)**

14 66. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 67. Numerous Employees are no longer employed by Defendants; they either quit
17 Defendants' employ or were fired therefrom.

18 68. Defendants failed to pay these Employees all wages due and certain at the time of
19 termination or within seventy-two (72) hours of resignation.

20 69. The wages withheld from these Employees by Defendants remained due and owing
21 for more than thirty (30) days from the date of separation of employment.

22 70. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
23 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
24 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
25 to thirty (30) days from the date they were due.

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1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

3 **(Against All Defendants)**

4 71. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 72. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
7 pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as alleged in
8 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
9 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
10 meaning of Code of Civil Procedure
11 § 1021.5.

12 73. Plaintiff is a “person” within the meaning of Business & Professions Code
13 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
14 relief, restitution, and other appropriate equitable relief.

15 74. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair
16 business practices.

17 75. Wage-and-hour laws express fundamental public policies. Paying employees their
18 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
19 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
20 to enforce minimum labor standards, to ensure that employees are not required or permitted to
21 work under substandard and unlawful conditions, and to protect law-abiding employers and their
22 employees from competitors who lower costs to themselves by failing to comply with minimum
23 labor standards.

24 76. Defendants have violated statutes and public policies. Through the conduct alleged
25 in this Complaint Defendants have acted contrary to these public policies, have violated specific
26 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
27 violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiff,
28 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges

1 guaranteed to all employees under the law.

2 77. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
3 violation of the Business & Professions Code § 17200 et seq.

4 78. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
5 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
6 care should have known that their conduct was unlawful; therefore their conduct violates the
7 Business & Professions Code § 17200 et seq.

8 79. As a proximate result of the above-mentioned acts of Defendants, Employees have
9 been damaged, in a sum to be proven at trial.

10 80. Unless restrained by this Court Defendants will continue to engage in such
11 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
12 make such orders or judgments, including the appointment of a receiver, as may be necessary to
13 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
14 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
15 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
16 failed to pay.

17 **NINTH CAUSE OF ACTION**

18 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

19 **(Against All Defendants)**

20 81. Plaintiff re-allege and incorporates all preceding paragraphs, as though set forth in
21 full herein.

22 82. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
23 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
24 alleged violators, Defendants.

25 83. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
26 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
27 penalty provisions, without limitation, based on the following California Labor Code sections:
28 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,

1 1194.2, 1197, 1198, 1199, 2698, and 2699.

2 84. The penalties shall be allocated as follows: 75% to the Labor and Workforce
3 Development Agency (LWDA) and 25% to the affected employee.

4 85. Employees also seek any and all penalties and remedies set forth in Labor Code
5 § 558, which states:

6 (a) Any employer or other person acting on behalf of an
7 employer who violates, or causes to be violated, a section of this
8 chapter or any provision regulating hours and days of work in any
9 order of the Industrial Welfare Commission shall be subject to a
10 civil penalty as follows: (1) For any initial violation, fifty dollars
11 (\$50) for each underpaid employee for each pay period for which
12 the employee was underpaid in addition to an amount sufficient to
13 recover underpaid wages. (2) For each subsequent violation, one
14 hundred dollars (\$100) for each underpaid employee for each pay
15 period for which the employee was underpaid in addition to an
16 amount sufficient to recover underpaid wages. (3) Wages
17 recovered pursuant to this section shall be paid to the affected
18 employee.

14 (b) If upon inspection or investigation the Labor
15 Commissioner determines that a person had paid or caused to be
16 paid a wage for overtime work in violation of any provision of
17 this chapter, or any provision regulating hours and days of work
18 in any order of the Industrial Welfare Commission, the Labor
19 Commissioner may issue a citation. The procedures for issuing,
20 contesting, and enforcing judgments for citations or civil penalties
21 issued by the Labor Commissioner for a violation of this chapter
22 shall be the same as those set out in Section 1197.1.

20 (c) The civil penalties provided for in this section are in addition to
21 any other civil or criminal penalty provided by law.

22 86. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
23 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
24 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
25 for each violation in a subsequent citation, for which the employer fails to provide the employee a
26 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
27 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

28 87. Plaintiff has exhausted his administrative remedy by sending a certified letter to the

1 LWDA and Defendants postmarked on October 19, 2020. The LWDA has not provided notice of
2 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
3 letters.

4 **RELIEF REQUESTED**

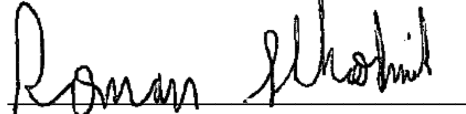
5 WHEREFORE, Plaintiff prays for the following relief:

- 6 1. For an order certifying this action as a class action;
- 7 2. For compensatory damages in the amount of the unpaid minimum wages for work
8 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
9 the filing of this action, as may be proven;
- 10 3. For liquidated damages in the amount equal to the unpaid minimum wage and
11 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 12 4. For compensatory damages in the amount of the hourly wage made by Employees
13 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
14 years prior to the filing of this action, as may be proven;
- 15 5. For compensatory damages in the amount of the hourly wage made by Employees
16 for each day requisite rest breaks were not provided or were deficiently provided where no
17 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
18 be proven;
- 19 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 20 7. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
21 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 22 8. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 23 9. For restitution for unfair competition pursuant to Business & Professions Code
24 § 17200 et seq., including disgorgement or profits, as may be proven;
- 25 10. For penalties pursuant to Labor Code § 2699, et seq., as may be proven;
- 26 11. For an order enjoining Defendants and their agents, servants, and employees, and
27 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
28 duties adumbrated in this Complaint;

12. For all general, special, and incidental damages as may be proven;
13. For an award of pre-judgment and post-judgment interest;
14. For an award providing for the payment of the costs of this suit;
15. For an award of attorneys' fees; and
16. For such other and further relief as this Court may deem proper and just.

DATED: March 29, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

By 

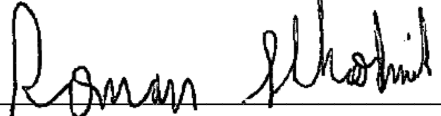
David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
JOHN PEHKONEN
and the putative class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: March 29, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
JOHN PEHKONEN
and the putative class