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Attorneys for Defendant Cummings Vacuum Service, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

JASON MCLELLAND, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*

Plaintiff,

v.

CUMMINGS VACUUM SERVICE, INC.,
a California corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: BCV-21-100238

Assigned to the Hon. Thomas S. Clark, Dept. 17

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: February 3, 2021

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims (“Settlement Agreement,” “Stipulation,”
3 or “Stipulation of Settlement”) is made and entered into by and between Plaintiff Jason McLelland
4 (“McLelland” or “Plaintiff” or “Class Representative”), individually and on behalf of the
5 Settlement Class and all others similarly situated, and Defendant Cummings Vacuum Service, Inc.
6 (“Defendant”), subject to the terms and conditions herein and the Court’s approval.

7 **A. Definitions.**

8 1. Plaintiff, the Settlement Class (as defined below), and Defendant are collectively
9 referred to herein as “the Parties.”

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall
12 be designated as “Class Counsel.”

13 3. The “Action” means the case entitled *Jason McLelland v. Cummings Vacuum*
14 *Service, Inc.*, Case No. BCV-21-100238, pending before the Superior Court of the State of
15 California for the County of Kern.

16 4. The “Settlement Class” shall be defined as “all non-exempt employees of
17 Defendant in California at any time between February 3, 2017 and February 22, 2022” (the “Class
18 Period”). Defendant represents that this Class contains no more than approximately 147 Class
19 Members who worked no more than 9,500 workweeks during the Class Period.

20 5. Members of the Settlement Class shall collectively be referred to as a “Class
21 Member” or “Class Members.” Any Class Member who files a timely Request for Exclusion, as
22 detailed below, will be excluded from the final Settlement Class.

23 **B. General.**

24 1. On November 23, 2020 and March 2, 2021, Plaintiff exhausted the pre-filing
25 requirements of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

26 2. On or about February 3, 2021, Plaintiff initiated the Action by filing a
27 Representative Action Complaint for Penalties, pursuant to PAGA, on behalf of himself and all
28 other aggrieved employees (the “Complaint”). Thereafter, on or about May 7, 2021, Plaintiff filed

1 a First Amended Complaint, which amended Defendant Universal Staffing Solutions, Inc.'s name.
2 On or about July 15, 2021, Defendant Universal Staffing Solutions, Inc. was dismissed from the
3 Action without prejudice. The Second Amended Complaint, attached hereto as **Exhibit 3** and which
4 will be filed as part of the settlement approval process, asserts class and PAGA representative action
5 claims against Defendant for (1) failure to pay all wages due (Labor Code §§ 510, 558 and 1194;
6 IWC Wage Order 9-2001); (2) failure to pay reporting time pay (Labor Code §§ 510, 558 and 1194;
7 IWC Wage Order 9-2001); (3) failure to provide compliant rest periods or compensation in lieu
8 thereof (Labor Code §§ 226.7 and 558; IWC Wage Order 9-2001); (4) failure to provide compliant
9 meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, 558, 1171, 1194 and
10 1198; IWC Wage Order 9-2001); (5) failure to comply with itemized employee wage statement
11 provisions (Labor Code §§ 226 and 226.3); (6) failure to timely pay wages due at separation of
12 employment (Labor Code §§ 201-203); (7) violation of Business and Professions Code §§ 17200,
13 *et seq.*; and (8) civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code
14 §§ 201, 202, 226, 226.3, 226.7, 510, 512, 558, 1171, 1194, and 1198 (the "Second Amended
15 Complaint").

16 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
17 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
18 purpose other than this settlement. Defendant contends that it has complied at all times with the
19 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
20 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to be
21 litigated, class certification would be inappropriate because Plaintiff is not an adequate class
22 representative, Plaintiff's claims are not typical of putative class members, and individual issues
23 predominate over class issues. The Action, the negotiation and execution of this Settlement
24 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
25 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
26 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
27 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
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1 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
2 class certification in the Action or with respect to any other proceeding.

3 4. The Class Representative contends that Defendant violated the California Labor
4 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
5 certification.

6 5. Class Counsel represent that they have conducted a thorough investigation into the
7 facts and law during the prosecution of this class action case, including the exchange of extensive
8 formal and informal discovery and the review and verification of statistical data and other facts and
9 information provided by Defendant. Counsel for the Parties also represent that they have
10 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
11 Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff.

12 6. On February 23, 2022, following their exchange of information and documents
13 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
14 engaged in arm's-length negotiations with the assistance of mediator Hon. Howard Broadman
15 (Ret.), through which they were able to reach the resolution of the Action set forth herein.

16 7. Based on their own independent investigation and evaluation, Class Counsel are of
17 the opinion (and will so represent to the Court) that settlement for the consideration and on the
18 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
19 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
20 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
21 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
22 that this settlement is fair and in the best interest of the Settlement Class.

23 8. The Parties agree that the Settlement Class described herein may be certified for
24 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
25 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
26 approved, the certification will have no force or effect and will immediately be revoked. The
27 Parties further agree that certification for purposes of the settlement is in no way an admission that
28 class certification is proper under the more stringent standard applied for litigation and that

evidence of this limited Stipulation for settlement purposes only will not be admissible for any purpose in this or any other proceeding.

C. Terms of Settlement.

1. The financial terms of the settlement are as follows:

(a) **Maximum Settlement Amount:** The Parties agree to settle this Action for a Maximum Settlement Amount of Two Hundred Forty-Five Thousand Dollars (\$245,000.00) (the “Maximum Settlement Amount”), subject to any increase based on the escalator provision in paragraph H(16) herein. The Maximum Settlement Amount includes the attorneys’ fees of Class Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the settlement, providing any notices required as part of the settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the Enhancement Payment to the Class Representative, as approved by the Court; the payment to the California Labor and Workforce Development Agency (“LWDA”); all employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds; and all costs of administration, including, without limitation, settlement administration fees and expenses.

(b) **Net Settlement Proceeds:** “Net Settlement Proceeds” is defined as the Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys’ fees and documented litigation costs and expenses incurred or advanced by Class Counsel; the Enhancement Payment to the Class Representative; the payment to the LWDA pursuant to PAGA; employer payroll taxes due on wage payments made from the Net Settlement Proceeds; and the costs of administering the settlement.

(c) **Individual Payment Amounts:** “Individual Payment Amount” means the portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form). The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of

1 weeks each individual participating Class Member worked for Defendant in California in a non-
2 exempt position during the Class Period to yield their Individual Payment Amount. Each
3 Participating Settlement Class Member who does not opt out will receive an Individual Payment
4 Amount equal to their individual weeks worked in California in a non-exempt position during the
5 Class Period multiplied by the weekly rate.

6 i. For tax purposes, each Individual Payment Amount will be
7 apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable
8 withholdings); (b) 50% to penalties (reported on an IRS Form 1099); and 30% to interest (reported
9 on an IRS Form 1099). All Individual Payment Amounts paid to Class Members will be subject to
10 any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

11 (d) **PAGA Payment:** The Parties agree that Ten Thousand Dollars
12 (\$10,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this
13 amount, Seventy-Five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), shall
14 be paid to the LWDA, and the remaining Twenty-Five percent (25%), or Two Thousand Five
15 Hundred Dollars (\$2,500.00), shall be included in the Net Settlement Proceeds for payment to Class
16 Members.

17 (e) **Enhancement Payment to Class Representative:** The amount awarded to
18 the Class Representative as an Enhancement Payment will be set by the Court in its discretion, not
19 to exceed Ten Thousand Dollars (\$10,000.00). This amount will be deducted from the Maximum
20 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his
21 Enhancement Payment. Defendant agrees not to dispute or otherwise object to the Enhancement
22 Payment if Plaintiff requests \$10,000 or less.

23 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
24 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
25 account the settlement award that has been made available for the Settlement Class by the efforts
26 of Class Counsel. The amount awarded shall not exceed 40% of the Maximum Settlement Amount
27 (i.e., Ninety-Eight Thousand Dollars (\$98,000.00)). An IRS Form 1099 will be issued to Class
28 Counsel with respect to its award of attorneys' fees. Defendant agrees not to dispute or otherwise

1 object to the attorneys' fee award requested by Class Counsel so long as the request does not exceed
2 40% of the Maximum Settlement Amount.

3 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
4 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
5 pocket litigation costs and expenses, not to exceed Twelve Thousand Dollars (\$12,000.00). An
6 IRS Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.
7 Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by Class
8 Counsel so long as the request does not exceed \$12,000.

9 (h) **Settlement Administration Costs:** The fees and other charges of the
10 Settlement Administrator to administer the Settlement are expected to total no more than Six
11 Thousand Dollars (\$6,000.00), and will be paid from the Maximum Settlement Amount. These
12 fees shall include any costs associated with the required tax reporting on any Individual Payment
13 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the
14 Parties have agreed that ILYM Group, Inc. will serve as a neutral third-party claims' administrator
15 ("Settlement Administrator") to perform all acts related to providing notice to the Settlement Class.
16 Settlement Administrator shall be responsible for (a) printing and distributing the Court-approved
17 Notice of Class Action Settlement ("Class Notice") to all Class Members; (b) administering the
18 settlement; (c) processing exclusions, objections, and field inquiries from Class Members; (d)
19 resolving disputes; (e) calculating the Individual Payment Amount each Participating Class
20 Members is eligible to receive; (f) distributing the Maximum Settlement Amount as directed by the
21 Court and set forth herein; (g) tax reporting; (h) providing necessary weekly status reports; and (i)
22 other duties and responsibilities set forth herein.

23 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
24 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
25 makes no representations regarding tax obligations or consequences, if any, related to this
26 Settlement Agreement.

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D. Release of Claims.

1. Upon the Effective Date, and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant Cummings Vacuum Service, Inc. and its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assignees ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period.

2. The "Released Claims" include all claims, rights, demands, liabilities and causes of actions that are alleged or reasonably could have been alleged based on the facts and claims asserted in the Action, including the following claims: all claims and allegations made or that could have been made in the Case based on the Amended Complaint (as amended to include class claims underlying the PAGA claims alleged in the current Complaint), including all claims for unpaid wages, unpaid meal and rest period premium wages, inaccurate wage statements, recordkeeping violations, waiting time penalties, any other penalties in the Labor Code, and late payment of wages at the separation of employment, including, but not limited to, claims arising under Labor Code sections 201-203, 226(a) and (e), 226.2, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1194, 1198, 2698, *et seq.*, the applicable Industrial Wage Commission Wage Orders, and PAGA and Business and Professions Code section 17200 as they relate to the underlying Labor Code claims referenced above, which arose during employment in a non-exempt position in California during the Class Period.

E. Notice and Exclusion Process.

1. Within ten (10) calendar days after entry of the order granting preliminary approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All

1 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
2 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
3 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
4 storage, custody, use, and/or dissemination of the confidential information. Such information must
5 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

6 2. A notice of pendency of class action, proposed settlement, and hearing date for
7 Court approval ("Class Notice") in the form attached hereto as **Exhibit 1**, and as approved by the
8 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
9 within twenty (20) calendar days after entry of the order granting preliminary approval. Attached
10 to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form
11 attached hereto as **Exhibit 2**.

12 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
13 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
14 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
15 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
16 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
17 notices.

18 4. Each Class Member will be fully advised of the settlement, the ability to object to
19 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
20 inform the Class Members of the Court-established deadlines for filing objections and a Request
21 for Exclusion Form.

22 5. Each Class Notice will contain personalized information setting forth the number of
23 weeks each Class Member worked for Defendant in California in a non-exempt position during the
24 Class Period and their estimated Individual Payment Amount. To the extent a Class Member
25 disputes any of the information listed on his or her Class Notice, the Class Member may produce
26 evidence to the Settlement Administrator showing such information the Class Member contends
27 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
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1 however, and the Settlement Administrator's decision on these matters will be final. The Class
2 Notice will also set forth IRS W-9 information if required.

3 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
4 to receive an Individual Payment Amount which shall be mailed to them if and when the Effective
5 Date occurs.

6 7. In order to elect not to participate in the Settlement, a Class Member must submit a
7 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
8 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
9 Class Members, unless the Court requires a longer period, in which case the Court ordered
10 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
11 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
12 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
13 next day on which the U.S. Postal Service is open.

14 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
15 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
16 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
17 on which the U.S. Postal Service is open.

18 9. The Settlement Administrator will search for additional addresses on returned mail
19 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
20 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
21 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
22 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
23 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
24 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
25 Settlement Administrator will search using the social security number for a more current address.
26 If no address is found within 10 days, no further action is required.

27 10. The Settlement Administrator will notify the Parties of the total number of valid
28 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the

1 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
2 and Request for Exclusion Forms to Class Members).

3 11. In order to object to the settlement, a Class Member must mail his or her objection
4 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
5 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
6 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
7 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
8 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
9 extended for any reason.

10 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
11 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
12 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
13 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
14 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
15 listing the amount of all payments to be made to each Class Member without names or personal
16 identifying information.

17 13. Defendant shall deposit the Maximum Settlement Amount with the Settlement
18 Administrator as follows: One Hundred Twenty-Five Thousand Dollars (\$125,000.00) no later than
19 ten (10) calendar days after the Effective Date (defined below) and twelve (12) subsequent
20 monthly payments of Ten Thousand Dollars (\$10,000.00) each, payable on the first day of each
21 month thereafter. The claims administrator will issue pro rata payments for the obligations due for
22 attorneys' fees and costs to Class Counsel, cost of administration, the enhancement to Plaintiff, and
23 the payment to the LWDA promptly after each deposit by Defendant of the Gross Settlement
24 Amount. Class Members will be issued their awards promptly after Defendant's deposit of the First
25 Installment and the final installment of the Gross Settlement Amount (i.e., two equal payments to
26 each Class Member approximately one year apart). No disbursements shall be made unless and
27 until the Effective Date of the Settlement first occurs. The effective date of this Settlement
28 Agreement ("Effective Date") is the date of the later of: (a) final approval by the Court; or (b) if

1 there are objections to the settlement which are not withdrawn, and if an appeal, review, or writ is
2 not sought from the judgment, the sixty-first (61st) day after service of notice of entry of judgment;
3 or (c) the dismissal or denial of an appeal, review, or writ, if the Judgment is no longer subject to
4 judicial review.

5 14. The Settlement Administrator shall disburse the Individual Payment Amount checks
6 promptly after the first and final installment payments (i.e., two equal payments to each Class
7 Member approximately one year apart). Plaintiff, Class Counsel, the settlement administrator, and
8 the LWDA shall each be paid their pro rata share of each installment payment promptly after
9 receipt. No disbursements shall be made unless and until the Effective Date of the Settlement first
10 occurs. Class Members must cash each of their Individual Payment Amount checks within one
11 hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The
12 value of any checks uncashed more than one hundred eighty (180) days after mailing shall be
13 cancelled and the gross amount of the checks paid to the Epilepsy Society of Kern County.

14 **F. Duties of the Parties Prior to Court Approval.**

15 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
16 Court for preliminary approval of this settlement and entry of an order accomplishing the
17 following:

- 18 (a) scheduling a fairness hearing on the question of whether the proposed
19 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
20 (b) approving as to form and content the proposed Class Notice;
21 (c) approving as to form and content the proposed Request for Exclusion
22 Form;
23 (d) preliminarily certifying the Settlement Class for purposes of settlement;
24 (e) preliminarily approving the PAGA payment of \$7,500 to the LWDA;
25 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
26 (g) preliminarily setting the enhancement payment to the Class Representative;
27 (h) preliminarily approving ILYM Group, Inc. as the Settlement

28 Administrator and its estimated fees and costs of \$6,000; and

1 (i) permitting Plaintiff to file the Second Amended Complaint.

2 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
3 of Plaintiff's unopposed motion for preliminary approval of the settlement.

4 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

5 1. In connection with the hearing on final approval of the settlement provided for in
6 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
7 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
8 by the Court):

9 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
10 and adequate, and directing consummation of its terms and provisions;

11 (b) approving Class Counsel's application for an award of attorneys' fees and
12 reimbursement of documented litigation costs and expenses, the Enhancement Payment to the
13 Class Representative, the PAGA Payment to the LWDA, and the costs of administering the
14 settlement; and

15 (c) entering judgment in this Action in accordance with this Stipulation,
16 pursuant to Cal. Rules of Court, Rule 3.769(h).

17 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
18 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
19 on final approval (unless otherwise ordered by the Court).

20 **H. Miscellaneous Provisions:**

21 1. **Voiding the Agreement.**

22 A failure of the Court to approve any material condition of this Settlement Agreement which
23 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
24 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
25 and unenforceable as to all Parties herein at the option of any Party.

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1 2. **Parties' Authority.**

2 The signatories hereto represent that they are fully authorized to enter into this Settlement
3 Agreement and bind the Parties hereto to the terms and conditions hereof.

4 3. **Mutual Full Cooperation.**

5 The Parties agree to fully cooperate with each other to accomplish the terms of this
6 Stipulation of Settlement, including but not limited to, execution of such documents and such other
7 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
8 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
9 by this Settlement Agreement and any other efforts that may become necessary by order of the
10 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
11 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
12 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
13 Court's preliminary and final approval of the settlement.

14 4. **No Prior Assignments.**

15 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
16 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
17 entity any portion of any liability, claim, demand, action, cause of action or rights released and
18 discharged by this Stipulation of Settlement.

19 5. **No Admission.**

20 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
21 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
22 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
23 Settlement Agreement with the intention of avoiding further disputes and litigation with the
24 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
25 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
26 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
27 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

1 **6. Construction.**

2 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
3 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
4 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
5 any Party or her or its counsel participated in the drafting of this Settlement Agreement.

6 **7. Captions and Interpretations.**

7 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
8 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
9 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
10 recital.

11 **8. Modification.**

12 This Settlement Agreement may not be changed, altered, or modified, except in writing and
13 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
14 discharged except by performance in accordance with its terms or by a writing signed by each of
15 the Parties hereto on their attorneys.

16 **9. Integration Clause.**

17 This Settlement Agreement contains the entire agreement between the Parties relating to
18 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
19 understandings, representations, and statements, whether oral or written and whether by a Party or
20 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
21 writing.

22 **10. Binding on Assigns.**

23 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
24 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

25 **11. Governing Law.**

26 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
27 according to the laws of the State of California, without giving effect to any conflict of law
28 principles or choice of law principles.

1 **12. Signatures of All Class Members Unnecessary to be Binding.**

2 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
3 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
4 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
5 provided herein and such shall have the same force and effect as if this Settlement Agreement was
6 executed by each Class Member.

7 **13. Counterparts.**

8 This Settlement Agreement may be executed in counterparts, and when each Party has
9 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
10 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
11 Agreement, which shall be binding upon and effective as to all Parties.

12 **14. Confidentiality**

13 Until Plaintiff files his motion for preliminary approval of the class action settlement, the
14 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
15 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
16 agencies, or as otherwise required by law.

17 **15. No Publicity**

18 Plaintiff and her Counsel will not contact the media about the settlement or respond to any
19 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
20 settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not post
21 any information about the settlement on social media or their firms' websites.

22 **16. Representation Regarding Class Size.**

23 Defendant has represented that there are no more than approximately 147 Class Members
24 who worked no more than 9,500 workweeks during the Class Period. Should either of these
25 numbers increase by more than 10%, the Maximum Settlement Amount will increase
26 proportionately based on the larger increase. For example, if there are 10,450 workweeks or 162
27 employees (i.e., an exactly 10% increase for both), the Maximum Settlement Amount will remain
28

1 unchanged. If there are 10,925 workweeks (i.e., a 15% increase) and 162 employees (i.e., a 10%
2 increase), the Maximum Settlement Amount shall increase by 5% (based on the greater increase in
3 excess of the 10% threshold).

4 **17. Default; Notice; Cure; Acceleration; Time is of the Essence.**

5 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
6 to timely make any payment due hereunder, it shall be in default of its obligations. Plaintiff shall
7 thereafter give notice of default and Defendant must cure said default within ten (10) business
8 days thereof. In the event of an uncured default, all unpaid amounts shall be accelerated and be all
9 due and payable together with interest at the legal rate from the date of default.

10 **18. Continuing Jurisdiction.**

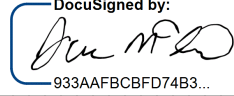
11 The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to
12 the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of
13 Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive and
14 continuing equity jurisdiction of this Action over all Parties and Class Members to interpret and
15 enforce the terms, conditions and obligation of the Agreement.

16 **19. Personal Guaranty by Ted and Pamela Cummings.**

17 The Parties agree that the owners of Cumming Vacuum Service, Inc., Ted and Pamela
18 Cummings, shall personally guaranty and be liable for all obligations of Cummings Vacuum
19 Service, Inc. under this Agreement.

20 [SIGNATURES ON FOLLOWING PAGE]
21
22
23
24
25
26
27
28

1 April 13, 2022
2 Dated: April _____, 2022

By: 
933AAFBCBFD74B3...

JASON MCLELLAND
Plaintiff and Class Representative

3
4 Dated: April _____, 2022

CUMMINGS VACUUM SERVICE, INC.

By: _____

Its: _____

5
6
7
8
9 Dated: April _____, 2022

By: _____

TED CUMMINGS
Guarantor

10
11
12 Dated: April _____, 2022

By: _____

PAMELA CUMMINGS
Guarantor

13
14
15
16 **APPROVED AS TO FORM AND CONTENT:**

17 Dated: April 14, 2022

GAINES & GAINES, APLC

By: Daniel F. Gaines
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

18
19
20
21
22 Dated: April _____, 2022

LEBEAU THELEN, LLP

By: _____
Daniel K. Klingenberg, Esq.
Mathew M. Brady, Esq.
Counsel for Defendant

1 Dated: April _____, 2022

By:

2 JASON MCLELLAND
3 Plaintiff and Class Representative

4 Dated: April 14, 2022

CUMMINGS VACUUM SERVICE, INC.

6 By:

7 Tom Pruitt
8 Its: General Manager

9 Dated: April 14, 2022

10 By:

11 Ted Cummings
12 TED CUMMINGS
13 Guarantor

14 Dated: April 14, 2022

15 By:

16 Pamela Cummings
17 PAMELA CUMMINGS
18 Guarantor

19 **APPROVED AS TO FORM AND CONTENT:**

20 Dated: April _____, 2022

GAINES & GAINES, APLC

21 By:

22 Daniel F. Gaines, Esq.
23 Alex P. Katofsky, Esq.
24 Counsel for Plaintiff and Class
25 Representative

26 Dated: April 21, 2022

LEBEAU THELEN, LLP

27 By:

28 Dan Klingenberger
Daniel K. Klingenberger, Esq.
Mathew M. Brady, Esq.
Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

JASON MCLELLAND, on behalf of himself
and all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*

Plaintiff,

v.

CUMMINGS VACUUM SERVICE, INC., a
California corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: BCV-21-100238

Assigned to the Hon. Thomas S. Clark, Dept. 17

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

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$245,000 to pay claims to all individuals who worked for Cummings Vacuum Service, Inc. (“Defendant”) as non-exempt employees in California at any time between February 3, 2017 and February 22, 2022.
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages due; pay reporting time pay; provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$98,000 as attorneys’ fees and \$12,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Cummings Vacuum Service, Inc. about the legal claims that were brought in this case.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On February 3, 2021, Plaintiff Jason McLelland ("Plaintiff"), a former employee of Cummings Vacuum Service, Inc., filed this lawsuit in the Kern County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between February 3, 2017 and February 22, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not provided all wages due; reporting time pay; compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Daniel K. Klingenberg, Esq.
Mathew M. Brady, Esq.
Lebeau Thelen, LLP
5001 East Commercenter Drive, Suite 300
Post Office Box 12092
Bakersfield, CA 93389

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for Cummings Vacuum Service, Inc. as non-exempt employees in California at any time between February 3, 2017 and February 22, 2022.

C. What does the Settlement provide?

1. Maximum Settlement Amount.

The Settlement provides that Defendant will pay \$245,000 (the "Maximum Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds amount is the Maximum Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$98,000;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$12,000;

(c) **Service Payments to the Class Representative** in an amount set by the Court, not to exceed \$10,000 for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$6,000.00, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$10,000 for the settlement of claims arising under the California Private Attorneys General Act (“PAGA”). 75% or \$7,500, shall be paid to the California Labor and Workforce Development Agency (“LWDA”). The remaining 25% or \$2,500, shall be included in the Net Settlement Proceeds for payment to Class Members

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant’s full payment of the Maximum Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant Cummings Vacuum Service, Inc. and its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assignees (“Released Parties”) from any and all Released Claims which arose during employment as a non-exempt employee in California during the Class Period.

The “Released Claims” include all claims, rights, demands, liabilities and causes of actions that are alleged or reasonably could have been alleged based on the facts and claims asserted in the Action, including the following claims: all claims and allegations made or that could have been made in the Case based on the Amended Complaint (as amended to include class claims underlying the PAGA claims alleged in the current Complaint), including all claims for unpaid wages, unpaid meal and rest period premium wages, inaccurate wage statements, recordkeeping violations, waiting time penalties, any other penalties in the Labor Code, and late payment of wages at the separation of employment, including, but not limited to, claims arising under Labor Code sections 201-203, 226(a) and (e), 226.2, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1194, 1198, 2698, et seq., the applicable Industrial Wage Commission Wage Orders, and PAGA and Business and Professions Code section 17200 as they relate to the underlying Labor Code claims referenced above, which arose during employment in a non-exempt position in California during the Class Period.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an “Individual Payment Amount,” which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked in California in a non-exempt position during the Class Period multiplied by the weekly rate.

For tax purposes, each Individual Payment Amount will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 50% to penalties (reported on an IRS Form 1099); and 30% to interest (reported on an IRS Form 1099). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [REDACTED] weeks while employed as a non-exempt employee in California from February 3, 2017 and February 22, 2022. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED], 2022. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

F. When Will I Be Paid?

After the Courts grants approval of the settlement, you will receive your Individual Payment Amount in two installments over one year.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Thomas S. Clark of the Kern County Superior Court, Department 17, located at 1415 Truxtun Ave., Bakersfield, California 93301. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [REDACTED]. The Settlement Administrator’s address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [redacted].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [redacted].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Kern County Superior Court, located at 1415 Truxtun Ave., Bakersfield, California 93301.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Jason McLelland v. Cummings Vacuum Service, Inc., and Does 1 Through 10, Inclusive*, Defendants, Kern County Superior Court, Case No. BCV-21-100238. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant Cummings Vacuum Service, Inc. as a non-exempt employee in California between February 3, 2017 and February 22, 2022.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

Cummings Vacuum Service, Inc. Claims Administrator
c/o ILYM Group, Inc.



EXHIBIT 3

DANIEL F. GAINES, ESQ. SBN 251488
 daniel@gaineslawfirm.com
 ALEX P. KATOFISKY, ESQ. SBN 202754
 alex@gaineslawfirm.com
 EVAN S. GAINES, ESQ. SBN 287668
 evan@gaineslawfirm.com
GAINES & GAINES, APLC
 4550 East Thousand Oaks Boulevard, Suite 100
 Westlake Village, CA 91362
 Telephone: (818) 703-8985
 Facsimile: (818) 703-8984

Attorneys for Plaintiff Jason McLelland, on behalf of himself and on behalf of all similarly situated individuals and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF KERN**

JASON MCLELLAND, on behalf of himself
 and all “aggrieved employees” pursuant to
 Labor Code § 2698 *et seq.*,

Plaintiff,

v.

CUMMINGS VACUUM SERVICE, INC., a
 California corporation, and DOES 1 through
 10, inclusive,

Defendants.

CASE NO: BCV-21-100238

*Assigned to the Hon. Thomas S. Clark, Dept.
 17*

**SECOND AMENDED CLASS AND
 REPRESENTATIVE ACTION
 COMPLAINT FOR:**

**1. FAILURE TO PAY ALL WAGES DUE
 (LABOR CODE §§ 510 AND 1194; IWC
 WAGE ORDER 9-2001)**

**2. FAILURE TO PAY REPORTING TIME
 PAY (LABOR CODE §§ 510 AND 1194;
 IWC WAGE ORDER 9-2001)**

**3. FAILURE TO PROVIDE COMPLIANT
 REST PERIODS OR COMPENSATION
 IN LIEU THEREOF (LABOR CODE §
 226.7; IWC WAGE ORDER 9-2001)**

**4. FAILURE TO PROVIDE COMPLIANT
 MEAL PERIODS OR COMPENSATION
 IN LIEU THEREOF (LABOR CODE §§
 226.7, 510, 512, 1171, 1194 AND 1198; IWC
 WAGE ORDER 9-2001)**

**5. FAILURE TO COMPLY WITH
 ITEMIZED EMPLOYEE WAGE
 STATEMENT PROVISIONS (LABOR
 CODE § 226(a), (e))**

**6. FAILURE TO TIMELY PAY WAGES
 DUE AT SEPARATION OF**

EMPLOYMENT (LABOR CODE §§ 201-203)**8. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.****9. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1171, 1194, AND 1198 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558****DEMAND FOR JURY TRIAL**

Complaint Filed: February 3, 2021

Plaintiff JASON MCLELLAND (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of CUMMINGS VACUUM SERVICE, INC., a California corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”), and each of them, as follows:

I.**INTRODUCTION AND FACTUAL BACKGROUND**

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other non-exempt employees who work or formerly worked for Defendants within the State of California.

2. From February 3, 2017 through February 22, 2022, Defendants have had a consistent policy of failing to pay all wages due to Class Members (as defined below); pay reporting time pay to Class Members; provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; provide accurately itemized wage statements to Class Members; and to timely pay wages upon separation of employment to Class Members.

3. Plaintiff, on behalf of himself and the members of the Class, brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 558, 1171, 1194, and 1198, seeking compensation for unpaid minimum, overtime, regular and reporting time wages and premium meal

1 and rest period wages, statutory penalties, injunctive and other equitable relief, and reasonable
2 attorneys' fees and costs.

3 4. Plaintiff, on behalf of himself and Class Members and pursuant to Business &
4 Professions Code §§ 17200-17208, seeks injunctive relief, restitution, and disgorgement of all
5 benefits Defendants enjoyed from their failure to pay all wages due to Class Members.

6 5. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
7 because Defendants employed Plaintiff and Class Members in Kern County, California.

8 6. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§
9 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

10 II.

11 PARTIES

12 A. Plaintiff

13 7. Plaintiff Jason McLelland was employed by Defendants from March 2020 through
14 December 2020 as a non-exempt employee in Kern County, California.

15 8. During his work with Defendants, Plaintiff was:

- 16 a. Willfully denied the payment of all wages due;
- 17 b. Willfully denied the payment of all reporting time pay due;
- 18 c. Willfully denied compliant rest periods or compensation in lieu thereof;
- 19 d. Willfully denied compliant meal periods or compensation in lieu thereof;
- 20 e. Willfully denied accurately itemized wage statements; and
- 21 f. Denied the timely payment of wages upon separation of his employment.

22 B. Defendants

23 9. Defendant Cummings Vacuum Service, Inc., is a California corporation that employed
24 Plaintiff and Class Members throughout the State of California, including Kern County, California.

25 10. The true names and capacities, whether individual, corporate, associate, or otherwise,
26 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
27 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
28 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a

DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

THE CLASS

All non-exempt employees of Defendant Cummings Vacuum Service, Inc. in California at any time between February 3, 2017 and February 22, 2022.

14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify these class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

15. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

16. The potential members of the Class as defined are so numerous that joinder of all Class Members is impracticable. While the precise number of members of the Class has not been

1 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 currently employ, and during the relevant time periods employed, over 75 persons in the State of
3 California who fall within the Class definition.

4 17. Accounting for employee turnover during the relevant period necessarily increases this
5 number. Plaintiff alleges Defendants' employment records would provide information as to the
6 number and location of members of the Class. Joinder of members of the Class is not practicable.

7 **B. Commonality**

8 18. There are questions of law and fact common to the Class that predominate over any
9 questions affecting only individual Class Members. These common questions of law and fact include,
10 without limitation:

- 11 a. Whether Defendants failed to properly pay all wages due to Plaintiff and Class
12 Members, in violation of Labor Code §§ 510 and 1194 and IWC Wage Order
13 9-2001;
- 14 b. Whether Defendants failed to properly pay reporting time pay to Plaintiff and
15 Class Members, in violation of Labor Code §§ 510 and 1194 and IWC Wage
16 Order 9-2001;
- 17 c. Whether Defendants failed to properly provide compliant rest periods or
18 compensation in lieu thereof to Plaintiff and Class Members, in violation of
19 Labor Code § 226.7 and IWC Wage Order 9-2001;
- 20 d. Whether Defendants failed to properly provide compliant meal periods or
21 compensation in lieu thereof to Plaintiff and Class Members, in violation of
22 Labor Code §§ 226.7, 510, 512, 1171, 1194, and 1198 and IWC Wage Order
23 9-2001;
- 24 e. Whether Defendants failed to provide Plaintiff and Class Members with
25 accurately itemized wage statements, in accordance with Labor Code § 226(a);
- 26 f. Whether Defendants failed to timely pay Plaintiff and Class Members all
27 wages due and owing at the separation of their employment, in violation of
28 Labor Code §§ 201-203; and

g. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

19. The claims of the named Plaintiff are typical of the claims of members of the Class. Plaintiff and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

20. Plaintiff will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

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

22. Class action treatment will allow those similarly situated persons 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 that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL WAGES DUE

(LABOR CODE §§ 510 AND 1194; IWC WAGE ORDER 9-2001)

23. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set forth herein.

24. During the liability period, Defendants failed to pay all wages due, in violation of Labor Code §§ 510 and 1194 and IWC Wage Order 9-2001. Defendants rounded down the hours reflected on Plaintiff's and other Class Members' time records to pay fewer hours worked than were actually worked. On a weekly basis, this rounding deprived Plaintiff and Class Members of significant hours worked. In addition, Defendants required Plaintiff and Class Members to be on-call every day of the week and to remain tethered to the Bakersfield, California area to await instructions. If they were not called in to work, Defendants would not compensate them for any time worked that day. An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of the employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When Plaintiff and Class Members were on-call, they were under the control of Defendants and required to be compensated for all hours worked. Defendants, however, failed to do so, in violation of Labor Code §§ 510 and 1194 and IWC Wage Order 9-2001, section 5.

25. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due, Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs pursuant to Labor Code § 1194.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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V.

SECOND CAUSE OF ACTION

PLAINTIFF AND CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY REPORTING TIME PAY

(LABOR CODE §§ 510 AND 1194; IWC WAGE ORDER 9-2001)

26. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set forth herein.

27. During the liability period, Defendants failed to pay Plaintiff and Class Members all reporting time pay, in violation of Labor Code §§ 510 and 1194 and IWC Wage Order 9-2001. Defendants required Plaintiff and Class Members to report to work only to be told they were no longer needed and be sent home within 2 hours of reporting to work. Defendants, however, failed to pay the required “half the usual or scheduled day’s work, but in no event . . . less than two (2) hours . . . at the employee’s regular rate of pay, which shall not be less than the minimum wage.” This violates Labor Code §§ 510, 558, and 1194 and IWC Wage Order 9-2001.

28. As a result of the unlawful acts of Defendants in willfully failing to pay reporting time pay, Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys’ fees, and costs pursuant to Labor Code § 1194.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE COMPLIANT REST PERIODS OR COMPENSATION IN LIEU

THEREOF

(LABOR CODE §§ 226.7 AND IWC WAGE ORDER 9-2001)

29. Plaintiff incorporates paragraphs 1 through 29 of this Complaint as though fully set forth herein.

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11 32. Pursuant to Labor Code § 226.7 and IWC Wage Order 9-2001, Plaintiff seeks the
12 payment of all rest period compensation which he and Class Members are owed, according to proof.
13 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

14 VII.

16 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

19 **(LABOR CODE §§ 226.7, 510, 512, 1171, 1194, AND 1198 AND IWC WAGE ORDER 9-2001)**

22 34. Plaintiff and Class Members are entitled to one hour of pay for each day that
23 Defendants failed to properly provide one or more compliant meal periods as set forth in Labor Code
24 §§ 226.7 and 512 and IWC Wage Order 9-2001.

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1 and a second meal period when they worked shifts greater than ten hours, but were not paid premium
2 wages of one hour's pay for each missed meal period. When Plaintiff and Class Members did receive
3 a meal period, they would typically be required to work through it, also depriving them of all wages
4 due. Defendants also failed to maintain meal period records, which show the time that meal periods
5 were taken. This violates Labor Code §§ 226.7, 510, 512, 1171, 1194, and 1198 and IWC Wage Order
6 9-2001.

7 36. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001, Plaintiff
8 seeks the payment of all unpaid meal period compensation which he and Class Members are owed,
9 according to proof.

10 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

11 **VIII.**

12 **FIFTH CAUSE OF ACTION**

13 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

14 **FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT**

15 **PROVISIONS**

16 **(LABOR CODE § 226(a), (e))**

17 37. Plaintiff incorporates paragraphs 1 through 37 of this Complaint as though fully set
18 forth herein.

19 38. Section 226(a) of the California Labor Code requires Defendants to provide wage
20 statements to employees. In those wage statements, Defendants must provide an accurate itemized
21 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
22 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
23 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
24 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
25 for which the employee is paid, (7) the name of the employee and only the last four digits of his or
26 her social security number or an employee identification number other than a social security number,
27 (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly
28

1 rates in effect during the pay period and the corresponding number of hours worked at each hourly
2 rate by the employee. Defendants have failed to comply with Labor Code § 226(a).

3 39. Defendants failed to issue Plaintiff and Class Members wage statements that fully and
4 accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members
5 were not paid all wages due, including minimum, overtime and reporting time wages and premium
6 wages for unauthorized meal and rest periods, as stated above. As such, the wage statements provided
7 by Defendants failed to accurately state all gross wages earned, in violation of Labor Code §
8 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation
9 of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).
11 Separately, the wage statements issued to Plaintiff and Class Members also failed to set forth all
12 applicable hourly rates in effect during the pay period and the corresponding number of hours worked,
13 in violation of Labor Code § 226(a)(9), as the wage statements failed to set forth the applicable
14 overtime rate when overtime hours were worked.

15 40. As a consequence of Defendants' willful conduct in failing to provide Class Members
16 with accurate itemized wage statements, Plaintiff and Class Members have been injured because they
17 have not been paid all wages due and were issued wage statements which do not reflect, and fail to
18 accurately state, all information required by Labor Code § 226(a). The missing information cannot
19 be discerned at all from the face of the wage statements themselves. As a result, Plaintiff and Class
20 Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual
21 damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each
22 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and
23 are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

24 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

41. Plaintiff incorporates paragraphs 1 through 41 of this Complaint as though fully set forth herein.

42. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

43. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, including minimum, overtime and reporting time wages and premium wages for unauthorized meal and rest periods, as stated above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment. Furthermore, when Plaintiff was terminated, he did not receive his final paycheck at the time of his termination; instead, it was issued to him well after his last day of employment. This violates Labor Code §§ 201-203 and is alleged on behalf of Plaintiff and certain Class Members who have left their employment with Defendants.

44. More than 30 days have passed since Plaintiff and Class Members have left Defendants' employ.

45. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as

1 a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of
2 employment.

3 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

4 **X.**

5 **SEVENTH CAUSE OF ACTION**

6 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

7 **UNFAIR COMPETITION PURSUANT TO**

8 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

9 46. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as though fully set
10 forth herein.

11 47. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and
12 on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant
13 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
14 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
15 and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within
16 the meaning of Code of Civil Procedure § 1021.5.

17 48. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
18 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
19 appropriate equitable relief.

20 49. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
21 practices.

22 50. Wage and hour laws express fundamental public policies. Properly providing
23 employees with all wages due are fundamental public policies of this State and of the United States.
24 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
25 standards, to ensure that employees are not required or permitted to work under substandard and
26 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
27 lower their costs by failing to comply with minimum labor standards.

28 51. Defendants have violated statutes and public policies. Through the conduct alleged

1 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
2 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
3 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
4 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
5 guaranteed to all employees under law.

6 52. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
7 §17200 *et seq.* of the Business & Professions Code.

8 53. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
9 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
10 17200 *et seq.* of the Business & Professions Code.

11 54. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
12 similarly situated have been damaged in a sum as may be proven.

13 55. Unless restrained by this Court, Defendants will continue to engage in the unlawful
14 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
15 should make such orders or judgments, including the appointment of a receiver, as may be necessary
16 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
17 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
18 to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the
19 money Defendants have unlawfully failed to pay.

20 **XI.**

21 **EIGHTH CAUSE OF ACTION**

22 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
23 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS**
24 **OF LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1171, 1194, AND 1198 AND**
25 **PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3**
26 **AND 558**

27 56. Plaintiff incorporates paragraphs 1 through 56 of this Complaint as though fully set
28 forth herein.

57. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

58. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, 1171, 1194, and 1198; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

59. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

60. On November 23, 2020 and March 2, 2021, Plaintiff sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of November 23, 2020 and March 2, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as described below.

XII.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194, in the amount of all unpaid minimum, overtime, and reporting time wages due to Plaintiff and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;

3. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
7. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
8. An award of prejudgment and post-judgment interest;
9. An award providing for payment of costs of suit, pursuant to Labor Code § 226(h) and other applicable law;
10. An award of attorneys' fees, pursuant to Labor Code § 226(h) and other applicable law; and
11. Such other and further relief as this Court may deem just and proper.

Dated: April 13, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: April 13, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff