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and Proposed Class Counsel  
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF KERN**  
11

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

14 Plaintiff,

15 v.

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

18 Defendants.  
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CASE NO: BCV-21-100238

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

**DECLARATION OF DANIEL F. GAINES IN  
SUPPORT OF UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND SEEKING  
LEAVE TO FILE SECOND AMENDED  
COMPLAINT**

**DATE: June 7, 2022**

**TIME: 8:30 a.m.**

**DEPT.: 17**

*Action Filed: February 3, 2021*

28 I, DANIEL F. GAINES, hereby declare and state as follows:

DECLARATION OF DANIEL F. GAINES IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT AND SEEKING LEAVE TO FILE SECOND AMENDED  
COMPLAINT

1           1.       I am an attorney duly admitted to the practice of law in the State of California. I am  
2       a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Jason McLelland ("McLelland" or  
3       "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts set  
4       forth herein and if called as a witness to testify to them, I could and would do so competently.

5       **Education and Experience:**

6           2.       I obtained my BS degree from the University California at Berkeley in 2003. I  
7       majored in Business Administration at the Haas School of Business.

8           3.       Thereafter, I attended the University of Virginia School of Law. At Virginia, I was  
9       a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy  
10      Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my  
11      studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

12          4.       Since becoming a member of the Bar, and until his recent retirement, I practiced law  
13      with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with  
14      an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex  
15      employment litigation similar to the instant action.

16          5.       My firm has represented employees in complex employment matters such as this  
17      one, with an emphasis in wage and hour issues. I have participated in and have been certified as  
18      class counsel in dozens of class action matters since my admission to the Bar. A list of the cases  
19      in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

20      **Factual and Procedural Background:**

21          6.       On November 23, 2020 and March 2, 2021, Plaintiff exhausted the pre-filing  
22      requirements of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

23          7.       On or about February 3, 2021, Plaintiff initiated the Action by filing a  
24      Representative Action Complaint for Penalties, pursuant to PAGA, on behalf of himself and all  
25      other aggrieved employees (the "Complaint"). Thereafter, on or about May 7, 2021, Plaintiff filed  
26      a First Amended Complaint, which amended Defendant Universal Staffing Solutions, Inc.'s name.  
27      On or about July 15, 2021, Defendant Universal Staffing Solutions, Inc. was dismissed from the  
28      Action without prejudice.

1           8.     The Second Amended Complaint, attached to the Settlement as **Exhibit 3** and which  
2 will be filed as part of the settlement approval process, asserts class and PAGA representative  
3 action claims against Defendant for (1) failure to pay all wages due (Labor Code §§ 510, 558 and  
4 1194; IWC Wage Order 9-2001); (2) failure to pay reporting time pay (Labor Code §§ 510, 558  
5 and 1194; IWC Wage Order 9-2001); (3) failure to provide compliant rest periods or compensation  
6 in lieu thereof (Labor Code §§ 226.7 and 558; IWC Wage Order 9-2001); (4) failure to provide  
7 compliant meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, 558,  
8 1171, 1194 and 1198; IWC Wage Order 9-2001); (5) failure to comply with itemized employee  
9 wage statement provisions (Labor Code §§ 226 and 226.3); (6) failure to timely pay wages due at  
10 separation of employment (Labor Code §§ 201-203); (7) violation of Business and Professions  
11 Code §§ 17200, *et seq.*; and (8) civil penalties pursuant to Labor Code §§ 2698, *et seq.* for  
12 violations of Labor Code §§ 201, 202, 226, 226.3, 226.7, 510, 512, 558, 1171, 1194, and 1198 (the  
13 “Second Amended Complaint”).

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

4 **Investigation and Settlement Discussions**

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

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

15 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**  
16 **Litigation:**

17           13. Based on our independent investigation and evaluation, my colleagues and I are of  
18 the opinion that settlement for the consideration and on the terms set forth in their Settlement  
19 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in  
20 light of all known facts and circumstances, including the risk of significant delay, the risk the  
21 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

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

3 15. The parties jointly prepared the Settlement Agreement and Release of Claims  
4 (“Settlement Agreement”, “Settlement”, or “Stip.”). A true and correct copy of the Settlement is  
5 attached hereto as **Exhibit B**.

6 16. My office created a comprehensive damage analysis using sampling information  
7 obtained through informal discovery. This damage analysis reveals that the negotiated settlement  
8 falls within a realistic range of recovery on Class Members’ claims.

9 17. Plaintiff alleges that Defendant failed to pay Class Members all wages due in three  
10 separate ways. Defendant allegedly rounded down the hours reflected on Class Members’ time  
11 records to pay fewer hours than were actually worked, in violation of Labor Code §§ 510, 558,  
12 and 1194. On a weekly basis, Plaintiff contends that this rounding practice deprived Class  
13 Members of significant hours worked and wages due. Plaintiff contends that Class Members were  
14 adversely affected as a result of the rounding policy.

15 18. Plaintiff also argued that Defendant required some Class Members to be on-call and  
16 remain tethered to the Bakersfield, California area to await instructions. If they were not called  
17 into work, Defendant would not compensate them for any time worked that day. These practices  
18 violate Labor Code §§ 510, 558, and 1194 and IWC Wage Order 9-2001. An employer is obligated  
19 to pay the wages of an hourly employee for all time that the employee is under the control of the  
20 employer, and this includes all the time the employee is suffered or permitted to work, whether or  
21 not required to do so. When Plaintiff and Class Members were on-call, they contend that they were  
22 under the control of Defendant and required to be compensated for all hours worked.

23 19. Plaintiff also alleged that Defendant would sometimes require Plaintiff and other  
24 Class Members to report to work only to be told they were not longer needed and be sent home  
25 within two hours of reporting to work, in violation of Labor Code §§ 510, 558, 1194 and IWC  
26 Wage Order 9-2001. Defendant must pay them for half the usual or scheduled day’s work, but in  
27 no event for less than two hours at the employee’s regular rate of pay, and Plaintiff alleges that it  
28 failed to do so.

1           20. Defendant denies that it failed to pay any unpaid wages. It argues that Class  
2 Members were never “on call” subjecting them to sufficient employer control that Defendant was  
3 obligated to pay them wages. It contends that its time rounding practices yielded the same wage  
4 payments to Class Members as if the time was not rounded. It argues that no reporting time wages  
5 are due, and even if such wages are due, their value is minimal. Defendant also strongly contends  
6 that any unpaid wage claims asserted by Class Members are highly individualized and therefore  
7 class certification is not appropriate on these claims. Based on these defenses, Plaintiff was  
8 required to compromise for purposes of reaching a resolution of the claims at this juncture of the  
9 litigation.

10           21. Plaintiff also alleges that Defendant failed to permit or authorize Class Members to  
11 take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor  
12 Code §§ 226.7, 510, 512, and 558 and IWC Wage Order 9-2001. Labor Code § 512 provides that  
13 employers (like Defendant) may not employ an employee for a work period of more than 5 hours  
14 without providing a 30-minute meal period starting no later than the end of the 5th hour. Plaintiff  
15 contends that Class Members were routinely unable to take a proper meal break when they worked  
16 shifts in excess of 5 hours in duration and a second meal break when they worked shifts in excess  
17 of 10 hours in duration. When they were able to take a meal period, Plaintiff argues that they would  
18 typically be required to work through it, also depriving them of all wages due. In addition,  
19 Defendant allegedly failed to maintain meal period records, which show the accurate time that  
20 meal periods were taken. These instances violate Labor Code §§ 226.7, 510, 512, 558, 1174, 1194,  
21 and 1198 and IWC Wage Order 9-2001.

22           22. Based on an analysis of a wage and time data provided by Defendant through  
23 discovery, Plaintiff has ascertained a meal period violation rate of 94.9% during the Class Period.  
24 Most violations are a result of missed meal periods (representing 98.2% violation rate). Defendant  
25 argued these rates were substantially inflated, and that any exposure on this claim is minimal,  
26 because Class Members entered into on-duty meal period agreements which, it contends, justify  
27 the lack of meal period time records. It also argued that the meal period claim was subject to a  
28 defense of waiver, and it implicated many individualized issues and manageability concerns which

1 would preclude class certification. Based on the risks inherent in further litigation, this claim  
2 required a discount for purposes of securing a settlement at this stage of the litigation.

3 23. Plaintiff further contends that Defendant failed to provide Class Members with  
4 legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by  
5 Labor Code §§ 226.7 and 558 and Wage Order 9-2001. Although Defendant maintains a legally  
6 compliant rest period policy, Plaintiff argues that its practices significantly deviated as Class  
7 Members were frequently denied rest periods. Defendant, in contrast, argued that this claim had  
8 no merit and could not be certified because the Court was to have to consider and assess each of  
9 the thousands of rest periods Defendant purportedly authorized Class Members to take, creating  
10 substantial manageability concerns that would easily defeat class certification. at class  
11 certification.

12 24. Plaintiff alleges that Defendant failed to issue Class Members accurately itemized  
13 wage statements and failed to timely pay all wages due at the separate of employment. Because  
14 Class Members were not paid all wages due, the wage statements provided by Defendant allegedly  
15 failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and  
16 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned,  
17 in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during  
18 the pay period and the corresponding number of hours worked at each hourly rate, in violation of  
19 Labor Code §§ 226(a)(9) and 226.3. Separately, the wage statements issued to Class Members  
20 also allegedly failed to set forth all applicable hourly rates in effect during the pay period and the  
21 corresponding number of hours worked, in violation of Labor Code § 226(a)(9). As to the timely  
22 payment of wages, Plaintiff alleges that Defendant's failure to pay all wages due triggered the  
23 imposition of penalties pursuant to Labor Code §§ 201-203. Defendant, in response, argued that  
24 these were highly technical penalty claims that the Court had tremendous discretion to reduce or  
25 eliminate, and argued that there were no underlying unpayments of wages which triggered the  
26 derivative wage statement violations and waiting time penalty claims alleged. Based on the risks  
27 inherent in prevailing on these claims, the compromised settlement amount reflects a fair discount  
28 on the maximum value of this claim.

1           25. The discount negotiated for settlement here is a reasonable compromise, particularly  
2 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves  
3 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which  
4 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses  
5 on the merits of the claims). Class certification is a substantial risk in any class action case. Here,  
6 while Plaintiff maintains that the requirements of class certification are met, Defendant proffers  
7 various arguments why class treatment is not appropriate, including but not limited to that  
8 individualized inquires among class members predominate over common ones. If Defendant was  
9 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and  
10 most class members would likely not file individual claims.

11           26. Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible  
12 that the Court would agree with Defendant's position that its policies and practices complied with  
13 the requirements of California law or could not be certified. In such a case, the value of the  
14 majority of Plaintiff's claims would be zero.

15           27. Defendant argued that even if a judgment was entered against it at some point years  
16 down the line, it would be uncollectible. Defendant shared confidential financial documents with  
17 counsel for Plaintiff, who concluded that Defendant's financial concerns were legitimate. Indeed,  
18 the parties agreed to an installment payment plan as recommended in the mediator's proposal by  
19 Judge Broadman.

20           28. Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty  
21 award on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant  
22 to the PAGA, which are valued at up to \$100 per employee per pay period for 2,140 aggregate pay  
23 periods worked during the one-year PAGA limitations period (i.e. up to \$214,000, without  
24 stacking penalties). Even if Plaintiff did prevail on these claims, it is possible that the Court would  
25 not impose all penalties pursuant to its discretionary power to reduce them.

26           29. Defendant strongly contends that its policies and practices do not violate any laws.  
27 It contends that it properly provided for all meal and rest periods and fully compensated their  
28

1 employees for all time worked. It further contends that the wage statements it provides to its  
2 employees are fully compliant with California law.

3 30. When the costs and risks of non-certification and loss on the merits are considered,  
4 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

5 31. The settlement for each Class Member is fair, reasonable and adequate, given the  
6 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such  
7 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the  
8 Action.

9 **Class Certification Requirements:**

10 32. To date, no class has been certified. The Stipulation of Settlement contains a  
11 provision pursuant to which we stipulate to the Court's provisional certification of the  
12 approximately 147-member Settlement Class, but do so for purposes of this settlement only.

13 33. In this case, the Class Members are identifiable from Defendant's employment and  
14 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.  
15 According to Defendant's records, the Class comprises approximately 147 employees.

16 34. The Class Members' claims all stem from a common source: members of the  
17 Settlement Class allege that Defendant violated the same Labor Code provisions in connection  
18 with their employment. All members of the Class seek the same relief under the same California  
19 laws (related to unpaid wages due, unpaid reporting time pay, unpaid meal and rest period  
20 premiums, inaccurate or incomplete wage statements, failure to timely pay wages due upon  
21 separation, and derivative claims). Under these circumstances, the commonality requirement is  
22 satisfied for purposes of certifying the Settlement Class for settlement purposes.

23 35. In this case, named Plaintiff and proposed Class Representative Jason McLelland is  
24 a former non-exempt employee who worked for Defendant in the State of California during the  
25 Class Period. He contends that Defendant failed to pay all overtime wages due, failed to pay for  
26 reporting time pay, failed to provide meal and rest periods, failed to comply with itemized  
27 employee wage statement provisions, and failed to timely pay wages at the separation of  
28 employment, in violation of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 558, 1171,

1 1194, 1198, 2698, and 2699, among other Labor Code provisions. He has the same claims as those  
2 that the members of the Settlement Class would reasonably be expected to bring based on the  
3 course of conduct alleged herein.

4 36. Plaintiff has also demonstrated that he will aggressively and competently assert the  
5 interests of the proposed Settlement Class; he has taken an active role in this litigation and has no  
6 apparent conflicts with other class members.

7 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

8 37. Concurrently with the filing of this Motion, Plaintiff's counsel is transmitting the  
9 Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor  
10 Code § 2699(l)(2).

11 I declare, under penalty of perjury, under the laws of the State of California, that the  
12 foregoing is true and correct. Executed this 5th day of May, 2022 at Calabasas, California.

13  
14 *Daniel F. Gaines*  
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16 DANIEL F. GAINES  
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# **EXHIBIT A**

*Adams v. Newell Rubbermaid*, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

*Adams v. Sam's West, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1403987

*Agredano v. GS Brothers, Inc.*, Los Angeles County Superior Court, Case No. BC445561

*Allen v. Toms Sierra Company*, Nevada County Superior Court, Case No. CU18-082823

*Allen v. Valley Inventory Service, Inc.*, Solano County Superior Court, Case No. FCS034682

*Alvarez v. Pilot Travel Centers, LLC*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

*Alonzo v. Camblin Steel Service, Inc.*, Placer County Superior Court, Case No. SCV0034165

*Amenhotep v. Google, Inc.*, Santa Clara County Superior Court, Case No. 17CV311528

*Anaya v. Progressive Logistics Services, LLC*, Riverside County Superior Court, Case No. RIC1308270

*Andre v. Newell Rubbermaid, Inc.*, San Bernardino County Superior Court, Case No. CIVVS1200282

*Anduha v. ABC Phones of North Carolina, Inc.*, Stanislaus County Superior Court, Case No. 2022729

*Anslow v. Wellington Energy, Inc.*, USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

*Aranda, et al. v. Universal Lumpers of California, Inc.*, San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

*Armendariz v. Integrated Pain Management Medical Group, Inc.*, Kern County Superior Court, Case No. BCV-19-100267-SDS

*Barrow, et al. v. Desmond Foods, L.P.*, Sacramento County Superior Court, Case No. 34-2015-00187227

*Batmanghelich v. Sirius XM Radio Inc.*, USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

*Bosser v. Hooked on Solar*, Yolo County Superior Court, Case No. CVCV-2016-876

*Bourland v. Horizon Personnel Services, Inc.*, Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

*Bowen v. IMI Material Handling Logistics, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

*Branson v. Mladen Buntich Construction*, San Bernardino County Superior Court, Case No. CIVDS1609129

*Brandt v. Sacramento Auto Insurance Center, Inc.*, San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

*Brown v. 22nd District Agricultural Association*, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

*Brown v. Sierra Central Credit Union*, Sutter County Superior Court, Case No. CVCS18-0002161

*Burgess v. Blue Cross and Blue Shield of South Carolina*, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

*Burgess v. Strategic Retail Solutions, LLC*, Los Angeles County Superior Court, Case No. BC413791

*Calhoun v. Celadon Trucking Services, Inc.*, USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

*Caporicci v. Owens & Minor Distribution, Inc.*, San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

*Carl v. Advanced Call Center Technologies, LLC*, Sacramento County Superior Court, Case No. 34-2013-00148310

*Carlisle, et al. v. Professional Technical Security Services, Inc.*, Case No. CGC18569791

*Carrete v. Gamestop, Inc.*, Imperial County Superior Court, Case No. ECU08501

*Carrillo v. Bimbo Bakeries, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1606813

*Caudillo v. Aegis Treatment Centers, LLC*, Merced County Superior Court, Case No. 18CV-0744

*Cerami v. Metlife, Inc.*, USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

*Charles v. Aaron's Inc.*, Los Angeles County Superior Court, Case No. BC431468

*Charles v. Nursefinders, LLC*, Imperial County Superior Court, Case No. ECU07422

*Cheifer v. JetBlue Airways Corporation*, Los Angeles County Superior Court, Case No. BC451887

*Cheifer, et al. v. WHGM, Inc.*, Los Angeles County Superior Court, Case No. LC104900

*Chong, et al. v. Crescent Northwoods Inn, Inc.*, Del Norte County Superior Court, Case No. CVUJ-2018-1133

*Church v. GameStop, Inc., et. al.*, USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

*Clothier v. Spar Marketing Services, Inc.*, Alameda County Superior Court, Case No: RG12-639317

*Coleman v. Wireless Lifestyle, Inc.*, USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

*Colombo-Beyeler, et al. v. Viking River Cruises, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1611608

*Conlee v. Clark Pacific Corporation*, Yolo County Superior Court, Case No. CV14-1409

*Contreras v. Osmose Utilities Services, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1513998

*Contreras v. West American Service Corporation*, Kings County Superior Court, Case No. 14C0280

*Corona v. Yosemite Meat & Locker Service, Inc.*, Stanislaus County Superior Court, Case No. 2006828

*Cortellessa v. Dotnext, Inc.*, Alameda County Superior Court, Case No. RG09429971

*County v. Ingram Mirco, Inc.*, San Bernardino Superior Court, Case No. CIVRS 1304445

*Covarrubias, et al. v. Petersendean Builder Group, Inc.*, Kern County Superior Court, Case No. BCV-16-101122

*Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf*, San Bernardino County Superior Court, Case No. CIVDS1719283

*Cruz-Garcia v. Lemonade Restaurant Group, LLC*, Los Angeles County Superior Court, Case No. BC478205

*Cunningham v. Performance Contracting, Inc.*, Contra Costa County Superior Court, Case No. C16-02157

*Dabney v. Coneybeare, LLC, et al.*, Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

*Dabney, et al. v. Panera, LLC.*, San Bernardino County Superior Court, Case No. CIVDS1516030

*Diaz, et al. v. Seaworld Entertainment, Inc.*, Imperial County Superior Court, Case No. ECU10046

*Diggs v. Western Waterproofing Company, Inc.*, San Francisco County Superior Court, Case No. CGC-14-539281

*Dismuke v. Rhodes Retail Services, Inc.*, Sacramento County Superior Court, Case No. 34-2011-00105001

*Dorsette v. TA Operating, LLC*, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

*Duran v. The Image of California, Inc.*, Kern County Superior Court, Case No. S-1500-CV-284056 DRL

*Edwards v. Trans World Entertainment Corp.*, San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

*Esakhani v. Central Valley Gaming*, Stanislaus County Superior Court, Case No. 2020667

*Escobar v. SMSSI of California, Inc.*, San Francisco Superior Court, JCCP No. 4776

*Espinosa v. Taltech Construction, et al.*, Los Angeles County Superior Court, Case No. BC590176

*Espinosa v. Bodycote Thermal Processing, Inc.*, Los Angeles County Superior Court, Case No. BC501617

*Espinoza v. Pabco Building Products, LLC*, Los Angeles County Superior Court, Case No. VC065660

*Estrada v. Net Source Communications, Inc.*, Los Angeles County Superior Court, Case No. BC431169

*Estrada v. OS Restaurant Services, LLC*, Santa Clara County Superior Court, Case No. 16CV293249

*Estupinan v. Global Development Strategies, Inc.*, Santa Clara County Superior Court, Case No. 110CV178898

*Fadhl. v. Siemens Healthcare Diagnostics Inc.*, Sacramento County Superior Court, Case No. 34-2017-00209518

*Fernandez v. The Regents of the University of California*, Los Angeles County Superior Court, Case No. BC656256

*Ferrer v. Dish Network Corporation*, Los Angeles County Superior Court, Case No. BC441354

*Findora v. Barry Callebaut USA LLC*, Napa County Superior Court, Case No. 19CV000219

*Flores v. Cintas Corporation*, Los Angeles County Superior Court, Case No. BC400422

*Friel v. Midwest Construction Services, Inc.*, San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

*Gagnon v. Banc of California*, Contra Costa County Superior Court, Case No. C 15-00196

*Galarza v. Bayou Well Services, LLC*, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

*Galarza v. C & H Testing Service LLC*, Kern County Superior Court, Case No. BCV-15-100008 SPC

*Garcia v. Old Dominion Freight Line, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1404636

*Geer v. Applied Aerospace Structures Corp.*, San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

*Getz v. California Cinema Investments, Inc.*, Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

*Gibbs v. M. Lehmann Enterprises*, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

*Gilles v. Schaefer Ambulance Service Inc.*, Imperial County Superior Court, Case No. ECU07970

*Goldman, et al. v. Defender's, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

*Gomez v. Low Desert Empire Pizza, Inc.*, San Bernardino County Superior Court, Case No. CIVVS900392

*Gomez v. Pizza Hut of Southeast Kansas, Inc.*, San Bernardino County Superior Court, Case No. CIVVS900679

*Gonzalez v. Harris Farms, Inc.*, USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

*Guerrero v. Main Electric Supply Company LLC*, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

*Gutierrez v. Asset Management Specialists, Inc.*, Fresno County Superior Court, Case No. 12CECG03577

*Gutierrez v. Linkus Enterprises, Inc.*, Madera County Superior Court, Case No. MCV065774

*Gutierrez v. Shiekh, LLC*, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

*Hairston v. Stanislaus Surgical Hospital*, Stanislaus County Superior Court, Case No. CV-19-000651

*Hindman v. Service Quick, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1724229

*Hogan v. iMobile of CA LLC*, San Bernardino County Superior Court, Case No. CIVDS1409263

*Hogan v. Wireless Evolution Inc.*, Riverside County Superior Court, Case No. MCC1300669

*Hogan v. Wireless That's It! LLC*, Riverside County Superior Court, Case No. RIC1201997

*Holmes v. Bottling Group, LLC*, Stanislaus County Superior Court, Case No. 2022584

*Hooper, et al. v. URS Midwest, Inc., et al.*, San Bernardino Superior Court, Case No. CIVDS1607489

*Humphrey v. Freedomroads, LLC*, Shasta County Superior Court, Case No. 178228

*Hurtado v. Rush Truck Centers of California, Inc.*, Los Angeles County Superior Court, Case No. BC427672

*Hyde v. Dent Wizard International Corporation*, Sacramento County Superior Court, Case No. 34-2015-00173882

*Ibrihim v. Imperfect Foods, Inc.*, San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

*Id-deen v. Educational Services of America*, Solano County Superior Court, Case No. FCS040803

*Isherwood v. Mason Dixon Intermodal, Inc.*, San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

*Jahanbin v. Pacific Mercantile Bank*, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

*Jenkins v. Sedgwick Claims Management Services, Inc.*, Los Angeles Superior Court, Case No. LC101648

*Job v. California Security Services*, Yuba County Superior Court, Case No. 14-0000820

*Johnson v. The Goodyear Tire & Rubber Company*, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

*Jolin v. Bay Cities Recovery, Inc.*, El Dorado County Superior Court, Case No. PC20100458

*Jordan v. Sutter Memorial Hospital*, Stanislaus County Superior Court, Case No. 2023344

*Keebaugh v. Mike Thompson Recreational Vehicles*, San Bernardino County Superior Court, Case No. CIV-DS-1500718

*Kelly v. Robin's Enviro Vac, Inc.*, Kern County Superior Court, Case No. S-1500-CV-282277  
DRL

*King v. Levy Premium Foodservice Limited Partnership*, Alameda County Superior Court, Case No. HG15786353

*Kunsman v. Punch Bowl Sacramento, LLC, et al.*, Sacramento County Superior Court, Case No. 34-2018-00243175

*LaFear v. Encore Education Corporation*, San Bernardino County Superior Court, Case No. CIVDS1802251

*Lanzarin v. AWI Management Corporation*, Solano County Superior Court, Case No. FCS041809

*Lee, et al. v. Foster Dairy Farms*, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

*Lemus, et al. v. Eastridge Workforce Technology, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1611470

*Lewis v. American Casino & Entertainment Properties LLC*, San Bernardino County Superior Court, Case No. CIVDS1719094

*Lemus v. On Assignment Staffing Services*, San Bernardino County Superior Court, Case No. CIV-DS-1600497

*Leon v. Piercey West Inc.*, Los Angeles County Superior Court, Case No. BC656874

*Lopez v. Creative Communication Technologies, Inc.*, Imperial County Superior Court, Case No. ECU07851

*Lopez v. Go Green Auto Spa Franchise, Inc., et al.*, Los Angeles County Superior Court, Case No. BC 562212

*Lopez v. Truck Accessories Group, LLC*, Yolo County Superior Court, Case No. CV13798

*Ludlow v. Prince Telecom, LLC*, Stanislaus County Superior Court, Case No. 684239

*Luna v. Express Locations, LLC*, Imperial County Superior Court, Case No. ECU09779

*Macias v. American Tire Distributors, Inc.*, Kern County Superior Court, Case No. BCV-18-101586

*Maldonado v. Hardwood Flooring Liquidators, Inc.*, Los Angeles County Superior Court, Case No. BC642170

*Mansfield v. Cambridge Real Estate Services, Inc.*, Butte County Superior Court, Case No. 160175

*Martinez v. DPI Specialty Foods West*, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

*Martinez v. Styles For Less, Inc.*, San Bernardino County Superior Court, Case No. CIVVS1203057

*Mayne v. John Muir Behavioral Health*, Contra Costa County Superior Court, Case No. C17-00998

*Maze v. Bulldog Freightway, Inc.*, Imperial County Superior Court, Case No. ECU08716

*McCormick v. G & O Body Shop, Inc.*, El Dorado Superior Court, Case No. PC20130291

*McCrary v. Campbell Soup Supply Company*, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

*McDaniel v. Vancary, Inc.*, Tulare County Superior Court, Case No. 268036

*Melgar-Farela v. Guardian Compliance, Inc.*, Los Angeles County Superior Court, Case No. BC481865

*Mendiola v. Tyco Electronics Corporation*, Riverside County Superior Court, Case No. RIC1400721

*Mettler v. Les Schwab Tire Centers of California, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

*Miller v. California Subshine, Inc.*, Los Angeles County Superior Court, Case No. BC637754

*Miller v. Southwest Airlines Co.*, USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

*Mitchell v. Crossmark, Inc.*, USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

*Moghrabi v. Vitaligent, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

*Molina v. Berkshire Hathaway Energy Company, et al.*, Imperial County Superior Court, Case No. ECU000522

*Moore v. Horizon Solar Power, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1410001

*Murray v. Select Media Services, LLC*, Los Angeles County Superior Court, Case No. BC424506

*Myles v. Central Transport LLC*, San Bernardino County Superior Court, Case No. CIVDS1401434

*Navarro v. Mariana Packing Co., Inc.*, Solano County Superior Court, Case No. FCS045935

*Nehrlich, et al. v. RPM Mortgage, Inc.*, Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

*Overton v. Hat World, Inc.*, USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

*Perez v. Alcatel-Lucent USA Inc.*, Imperial County Superior Court, Case No. ECU07977

*Perez v. Major Gloves and Safety, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1710445

*Perry v. Cardinal Health 200, LLC*, Solano County Superior Court, Case No. FCS035303

*Phraxayavong-Briones v. RSM, Inc.*, Sacramento County Superior Court, Case No. 34-2012-00117524

*Pugh v. Wi Spa, LLC*, Imperial County Superior Court, Case No. ECU07932

*Quist v. Knight Transportation, Inc.*, San Bernardino Superior Court, Case No. CIVDS 1615414

*Quitco v. Aviation Fuel Systems Repair, Inc.*, San Bernardino Superior Court, Case No. CIVRS1302311

*Rambeau v. C.C.M. Corporation, et al.*, Sacramento County Court, Case No. 34-2018-00244842

*Rankins v. Roman Empire Living Skills, Inc.*, Los Angeles County Superior Court, Case No. BC713399

*Rees v. Advantel, Incorporated*, Santa Clara County Superior Court, Case No. 16-CV-292219

*Renfrow v. Janra Enterprises, Inc.*, Sacramento County Superior Court, Case No. 3402010-00080471

*Reynolds v. Diamond Pet Food Processors of Ripon*, San Joaquin County Superior Court, Case No. 39-2014-00310818

*Richard v. A-Para Transit Corp.*, Alameda County Superior Court, Case No. HG17870373

*Richardson v. TEC Equipment, Inc., et al.*, Los Angeles County Superior Court, Case No. VC065536

*Robles v. North County Health Project Incorporated*, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

*Rodas v. Monetary Management of California, Inc.*, USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

*Rodriguez v. 20/20 Plumbing & Heating, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1705362

*Rodriguez v. Commerce Distribution Company*, Los Angeles County Superior Court, Case No. BC656259

*Rodriguez v. Valley Oak*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

*Roden v. Service Champions*, San Bernardino County Superior Court, Case No. CIVDS1613183

*Russell v. Bradshaw International*, Imperial County Superior Court, Case No. ECU00853

*Rutledge, et al. v. Healthport Technologies, LLC*, Alameda County Superior Court, Case No. RG16835813

*Sabala v. Econtactlive, Inc.*, Stanislaus County Superior Court, Case No. 684981

*Sabatier v. Picture Perfect Installation, Inc.*, Riverside County Superior Court, Case No. RIC10004953

*Salameh v. Sonomaidence OPCO, LLC*, Sonoma County Superior Court, Case No. SVC264228

*Salazar v. Tag-3 Medical Investment Group, LLC*, Los Angeles County Superior Court, Case No. BC527698

*Salbeck v. Ingredion Incorporated*, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

*Sampson v. Healthnet of California Inc.*, Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

*Sanchez v. Don Roberto Jewelers, Inc.*, Imperial County Superior Court, Case No. ECU06819

*Sanders v. Lionakis*, Sacramento County Superior Court, Case No. 34-2017-00223601

*Santana v. United Staffing Associates, LLC*, Tulare County Superior Court, Case No. 249338

*Schrader v. Adidas Promotional Retail Operations, Inc.*, Los Angeles County Superior Court, Case No. BC414168

*Sebrell v. Pomeroy IT Solutions*, San Bernardino County Superior Court, Case No. CIVDS1721560

*Seymour v. Quest Service Group, LLC*, Sacramento County Superior Court, Case No. 34-2017-00206917

*Silva v. Trical*, San Benito County Superior Court, Case No. CU-16-00218

*Simler v. Polly's Inc.*, Riverside County Superior Court, Case No. RIC 1117862

*Sipin, Scott v. Salesforce.com, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

*Skuro v. BMW of North America, LLC*, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

*Smith v. Steelcase, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1725850

*Sohal v. Foster Poultry Farms*, Stanislaus County Superior Court, Case No. 2026605

*Solomon v. City of Los Angeles*, Los Angeles County Superior Court, Case No. BC570345

*Solano v. Vozzcom, Inc.*, Imperial County Superior Court, Case No. ECU09519

*Smith, et al. v. Sente Development, Inc.*, Sacramento County Superior Court, Case No. 34-2016-00196614

*Solorzano v. FDS Manufacturing Corporation*, Los Angeles County Superior Court, Case No. BC542532

*Solowitz v. BakeMark USA LLC*, Los Angeles County Superior Court, Case No. BC467838

*Spampinato v. Wind & Sea Restaurants, Inc.*, San Bernardino County Superior Court, Case No. CIVVS1205154

*Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc.*, San Bernardino County Superior Court, Case No. C IVDS1712220

*Stephens v. C.S., Inc.*, Riverside County Superior Court, Case No. PSC1301224

*Stevenson v. Harvest Management Sub LLC*, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

*Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources*, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

*Thompson v. Sidhu Truck Line, Inc.*, Kern County Superior Court, Case No. BCV-15-101308-DRL

*Tigas v. Ajilon Communications*, Los Angeles County Superior Court, Case No. BC409737

*Torres v. Coastal Employment Inc.*, Los Angeles County Superior Court, Case No. BC529207

*Tran v. CSP Fiber Services*, San Bernardino County Superior Court, Case No. CIVDS172758

*Tripp v. California Guest Services, Inc.*, Plumas County Superior Court, Case No. CV16-00036

*Valdez v. Diamond Landscaping, Inc.*, Los Angeles County Superior Court, Case No. BC497097

*Valencia v. American Team Managers, Inc.*, Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

*Van Son v. Rush Truck Centers of California, Inc.*, Los Angeles County Superior Court, Case No. BC494747

*Vasquez v. Schurman Fine Papers*, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

*Velasquez v. Modesto Ventures, LLC*, Sacramento County Superior Court, Case No. 32-2012-00126159

*Victoria v. Bali Limousines Inc.*, San Mateo County Superior Court, Case No. CIV507774

*Victorian v. Vision X, Inc.*, Los Angeles County Superior Court, Case No. BC400333

*Wade v. Frito Lay*, Kern County Superior Court, Case No. BCV-17-102014

*Walls v. E. & J. Gallo*, Stanislaus County Superior Court, Case No. 2015874

*Warner v. Waterdrops Express Car Wash, LLC*, Tulare County Superior Court, Case No. 265708

*Waybright v. EAH, Inc.*, Stanislaus County Superior Court, Case No. 2011677

*Weiss v. C.A.R. Enterprises, Inc.*, Riverside County Superior Court, Case No. RIC1113165

*White v. Sally Beauty Supply, LLC*, Imperial County Superior Court, Case No. ECU08177

*Williams v. Dennis Dillon RV, LLC*, San Bernardino County Superior Court, Case No. CIVDS 16006879

*Williams v. Closet World, Inc.*, Los Angeles County Superior Court, Case No. BC400178

*Williams v. Progress Rail Services Corporation*, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

*Wing v. Three Group, Inc.*, Los Angeles County Superior Court, Case No. BC643883

*Wilson v. ALSCO, Inc.*, Imperial County Superior Court, Case No. ECU07406

*Wilson v. Michael C. Stead, Inc.*, Contra Costa Superior Court, Case No. C1400135

*Winningham v. Storer Transportation Service*, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

*Woody v. WBN Home Design*, San Bernardino County Superior Court, Case No. CIVDS1613367

*Woods, et al. v. F&B Innovations, LLC*, San Bernardino County Superior Court, Case No. CIVDS1717765

*Woodyard v. Bellus ALC Acquisition, LLC*, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

*Wright v. Social Vocational Services, Inc.*, Kern County Superior Court, Case No. BCV-15-101264

*Ybarra v. New Legend, Inc.*, Sutter County Superior Court, Case No. CVCS-16-2097

*Zaragoza v. Center Automotive, Inc.*, Los Angeles Superior Court, Case No. BC505194

# **EXHIBIT B**

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14

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

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

19 Plaintiff,

20 v.

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

23 Defendants.  
24

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  
28

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.

27 ///

28 ///

1     **D.     Release of Claims.**

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

9             2.     The "Released Claims" include all claims, rights, demands, liabilities and causes  
10    of actions that are alleged or reasonably could have been alleged based on the facts and claims  
11    asserted in the Action, including the following claims: all claims and allegations made or that  
12    could have been made in the Case based on the Amended Complaint (as amended to include class  
13    claims underlying the PAGA claims alleged in the current Complaint), including all claims for  
14    unpaid wages, unpaid meal and rest period premium wages, inaccurate wage statements,  
15    recordkeeping violations, waiting time penalties, any other penalties in the Labor Code, and late  
16    payment of wages at the separation of employment, including, but not limited to, claims arising  
17    under Labor Code sections 201-203, 226(a) and (e), 226.2, 226.3, 226.7, 227.3, 510, 512, 558,  
18    1174, 1194, 1198, 2698, *et seq.*, the applicable Industrial Wage Commission Wage Orders, and  
19    PAGA and Business and Professions Code section 17200 as they relate to the underlying Labor  
20    Code claims referenced above, which arose during employment in a non-exempt position in  
21    California during the Class Period.

22    **E.     Notice and Exclusion Process.**

23             1.     Within ten (10) calendar days after entry of the order granting preliminary approval  
24    of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class  
25    Members, including their last known addresses, telephone numbers, social security numbers, and  
26    their dates of employment in a non-exempt position in California during the Class Period  
27    ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security  
28    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,  
28

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.

26 \\\

27 \\\

28 \\\

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  
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26  
27  
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April 13, 2022  
Dated: April \_\_\_\_, 2022

By:

DocuSigned by:  
  
933AAAFBCBFD74B3...

**JASON MCLELLAND**  
Plaintiff and Class Representative

Dated: April \_\_\_\_\_, 2022

CUMMINGS VACUUM SERVICE, INC.

By:

Its:

Dated: April \_\_\_\_\_, 2022

By:

TED CUMMINGS  
Guarantor

Dated: April \_\_\_\_\_, 2022

By:

PAMELA CUMMINGS  
Guarantor

**APPROVED AS TO FORM AND CONTENT:**

Dated: April 14, 2022

GAINES &amp; GAINES, APLC

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

Dated: April \_\_\_\_\_, 2022

LEBEAU THELEN, LLP

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

1 Dated: April \_\_\_\_\_, 2022

By:

JASON MCLELLAND  
Plaintiff and Class Representative

2  
3  
4 Dated: April 14, 2022

CUMMINGS VACUUM SERVICE, INC.

By: Tom Pruitt

Its: Cummings

5  
6  
7  
8  
9 Dated: April 14, 2022

By: Ted Cummings

TED CUMMINGS  
Guarantor

10  
11  
12  
13 Dated: April 14, 2022

By: Pamela Cummings

PAMELA CUMMINGS  
Guarantor

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

17 Dated: April \_\_\_\_\_, 2022

GAINES & GAINES, APLC

By:

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

18  
19  
20  
21  
22 Dated: April 21, 2022

LEBEAU THELEN, LLP

By: Daniel K. Klingenberg  
Daniel K. Klingenberg, 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.

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Do Nothing</b>                                        | 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. |
| <b>Exclude Yourself</b>                                  | 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 <b>no money from the Settlement</b> . 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.                                           |
| <b>Object</b>                                            | 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.                                                                                                                                                                                                                                                   |
| <b>Go to a Hearing</b>                                   | 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 [ ] 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 \$[ ]. 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 \_\_\_\_\_, 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 \_\_\_\_\_, 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 \_\_\_\_\_. 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 \_\_\_\_\_.

- **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 \_\_\_\_\_.

**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**

1 DANIEL F. GAINES, ESQ. SBN 251488  
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2 ALEX P. KATOFISKY, ESQ. SBN 202754  
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5 Westlake Village, CA 91362  
Telephone: (818) 703-8985  
6 Facsimile: (818) 703-8984

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

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF KERN**

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

13 Plaintiff,

14 v.

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

17 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**



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

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

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

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

### 11 III.

#### 12 CLASS ACTION ALLEGATIONS

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

#### 16 THE CLASS

17 All non-exempt employees of Defendant Cummings Vacuum Service,  
18 Inc. in California at any time between February 3, 2017 and February  
19 22, 2022.

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

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

#### 26 A. Numerosity

27 16. The potential members of the Class as defined are so numerous that joinder of all Class  
28 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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1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

5 FAILURE TO PAY ALL WAGES DUE

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

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

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

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

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

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28 ///

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.

\\

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

31. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 9-2001. Plaintiff and Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. During their employment with Defendants, Plaintiff and Class Members rarely, if ever, received a rest period despite routinely working in excess of twelve hours in a workday. This violates Labor Code § 226.7 and IWC Wage Order No. 9-2001.

32. Pursuant to Labor Code § 226.7 and IWC Wage Order 9-2001, Plaintiff seeks the payment of all rest period compensation which he and Class Members are owed, according to proof.

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

VII.

#### FOURTH CAUSE OF ACTION

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

## FAILURE TO PROVIDE COMPLIANT MEAL PERIODS OR COMPENSATION IN LIEU

**THEREOF**

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

33. Plaintiff incorporates paragraphs 1 through 33 of this Complaint as though fully set forth herein.

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

35. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 510, 512, 1171, 1194 and 1198 and IWC Wage Order 9-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration.

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

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Dated: April 13, 2022

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