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

10 MICHAEL NEVAREZ,

11 *Plaintiff,*

12
13 vs.

14 LYNWOOD ROADS DELIVERY, LLC
15 and DOES 1 to 25, inclusive

16 *Defendant(s).*
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Case No.: 21STCV41387

**MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND RELEASE**

Action filed: 11/9/2021

CMC: 3/9/22
Trial: None Set

Hearing Date/Time:
February 18, 2022,
8:30am

Reservation ID:
456599702632

Department: 48, Hon. Laura Seigle

Submitted Herewith Under Separate Cover:

1. Declaration of Harout Messrelia In Support of Motion for Approval of PAGA Settlement and Release; and
2. [Proposed] Final Order and [Proposed] Final Judgment

1 **I. INTRODUCTION**

2 Plaintiff Michael Nevarez (“Plaintiff”) and Defendant LYNWOOD ROADS
3 DELIVERY, LLC (“LYNWOOD ROADS” or “Defendant(s)”) have reached an agreement to
4 settle the above-captioned action (the “Action”). Plaintiff and LYNWOOD ROADS have
5 memorialized the terms of their settlement in a document titled “Joint Stipulation of PAGA
6 Settlement Agreement and Release” (hereafter, the “Settlement Agreement”). Attached as
7 “**Exhibit A**” is a true and correct copy of the Settlement Agreement. By this Motion for Approval
8 and pursuant to California Labor Code § 2699(l), Plaintiff seeks an order and judgment
9 permitting settlement on the terms outlined in the Settlement Agreement and the Court’s approval
10 of Plaintiff’s and LYNWOOD ROADS’ settlement as memorialized in the Settlement
11 Agreement. Plaintiff and Defendant are collectively referred to as the “Parties” and any one of
12 them individually may be referred to as a “Party.”

13 Defendant adamantly denies any liability or wrongdoing of any kind whatsoever
14 associated with the Action, and further denies that, for any purpose other than settling the
15 Action, the Action is appropriate for representative treatment. It is the desire of the Parties to
16 fully, finally, and forever compromise, release and discharge all claims, liabilities and/or causes
17 of action, known or unknown, suspected or not suspected, arising from, related to or
18 attributable to the claims and/or allegations alleged in the Action or Plaintiff’s Notice to the
19 LWDA dated November 19, 2020, including all claims, liabilities and/or causes of action for
20 civil penalties for violations allegedly occurring during the Covered Period that Plaintiff, the
21 Covered Employees, and/or the State of California may have under the California Labor Code,
22 IWC Wage Orders, state and/or federal regulations, and/or any other provisions of state and/or
23 federal law, whether known or unknown, suspected or unsuspected, arising from, related to, or
24 attributable to any allegations that Plaintiff and/or the Covered Employees suffered Labor Code
25 and/or other violations based on and/or for (1) failure to pay all wages for all hours worked,
26 including, but not limited to, for off-the-clock work; (2) failure to pay all overtime and/or
27 double time wages; (3) failure to pay overtime wages at the correct regular rates of pay; (4)
28 failure to pay minimum wages; (5) failure to provide compliant rest periods and to pay related
rest period premiums of one additional hour of pay at each Covered Employee’s regular rate of

1 compensation for each work day that one or more rest periods was not provided; (6) failure to
2 provide compliant meal periods and to pay related meal period premiums of one additional
3 hour of pay at each Covered Employee's regular rate of compensation for each work day that
4 one or more meal periods was not provided; (7) failure to timely pay all wages during
5 employment as required by applicable law; (8) failure to timely pay all wages at termination,
6 and failure to pay applicable waiting time penalties; (9) unlawful taking, confiscation,
7 conversion, collection, interference with, receiving and/or handling of gratuities (tips) left by
8 patrons, and failure to return, pay and/or provide all gratuities in a timely fashion, and failure to
9 keep accurate records of all gratuities received; (10) failure to provide compliant, complete and
10 accurate itemized wage statements; (11) failure to maintain accurate and complete timekeeping
11 and payroll records; (12) failure to reimburse all necessary business expenses, losses and/or
12 costs; (13) failure to provide sick pay and to provide notice of sick pay rights; (14) failure to
13 provide Workers' Compensation insurance coverage; (15) violations of Labor Code section
14 558; (16) unlawful time rounding policies and procedures; (17) unfair business practices
15 (Business & Professions code section 17200); (18) any other Labor Code violations alleged in
16 the Litigation, or that could have been alleged in the Litigation based on the facts alleged in the
17 Litigation; and (19) any other Labor Code violations based on, arising from, related to, or
18 attributable to the facts alleged and contentions raised in the LWDA Notice and/or Plaintiff's
19 State Court Complaint, which include, but are not limited to, alleged violations of Labor Code
20 sections 201-204, 204b, 210, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 558.1, 1174,
21 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3700.5; the IWC Wage
22 Orders, including Wage Order nos. 4 and 9; Business & Professions Code section 17200; and
23 the California Code of Regulations (the "Released Claims"). Additionally, the Parties'
24 Settlement Agreement includes a California Civil Code section 1542 waiver of the Released
25 Persons (as defined in the "Settlement Agreement") as to the Released Claims only.

26 **II. ALLEGATIONS AND INVESTIGATION**

27 A. Defendant LYNWOOD ROADS is in the marijuana delivery industry. Plaintiff
28 was hired to work for Defendant as a local delivery driver on or around early October 2020.

1 Plaintiff's employment with Defendant ended on or around early November 2020. At all times
2 during his employment, Plaintiff was classified by Defendant as an hourly, non-exempt
3 employee.

4 B. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
5 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
6 ("PAGA"). On November 19, 2020, Plaintiff, on behalf of himself and Defendant's other
7 current and former non-exempt employees who were employed by Defendant in California
8 during the Covered Period (hereafter collectively the "Covered Employees," "Aggrieved
9 Employees" or "Aggrieved Employee" as singular, defined as all current and former non-
10 exempt employees of Defendant (including, but not limited to, Plaintiff), who were employed
11 by Defendant in California at any time during the "Covered Period" running from November
12 19, 2019 to the date the Court grants approval of the Settlement) gave written notice by
13 electronic service to the California Labor and Workforce Development Agency ("LWDA") and
14 via certified mail to Defendant of his claims against Defendant. In his notice to the LWDA,
15 Plaintiff asserted on behalf of himself and the Aggrieved Employees that Defendant committed
16 the following labor violations against the Covered Employees, including himself: (1) failure to
17 pay all wages for all hours worked, including, but not limited to, for off-the-clock work; (2)
18 failure to pay all overtime and/or double time wages; (3) failure to pay overtime wages at the
19 correct regular rates of pay; (4) failure to pay minimum wages; (5) failure to provide compliant
20 rest periods and to pay related rest period premiums of one additional hour of pay at each
21 Covered Employee's regular rate of compensation for each work day that one or more rest
22 periods was not provided; (6) failure to provide compliant meal periods and to pay related meal
23 period premiums of one additional hour of pay at each Covered Employee's regular rate of
24 compensation for each work day that one or more meal periods was not provided; (7) failure to
25 timely pay all wages during employment as required by applicable law; (8) failure to timely
26 pay all wages at termination, and failure to pay applicable waiting time penalties; (9) unlawful
27 taking, confiscation, conversion, collection, interference with, receiving and/or handling of
28 gratuities (tips) left by patrons, and failure to return, pay and/or provide all gratuities in a timely
fashion, and failure to keep accurate records of all gratuities received; (10) failure to provide

1 compliant, complete and accurate itemized wage statements; (11) failure to maintain accurate
2 and complete timekeeping and payroll records; (12) failure to reimburse all necessary business
3 expenses, losses and/or costs; (13) failure to provide sick pay and to provide notice of sick pay
4 rights; (14) failure to provide Workers' Compensation insurance coverage; (15) violations of
5 Labor Code section 558; (16) unlawful time rounding policies and procedures; and (17) unfair
6 business practices in violation of Business & Professions Code section 17200. Plaintiff filed his
7 initial lawsuit on November 9, 2021 in the Superior Court for the State of California, County of
8 Los Angeles, Case No. 21STCV41387 with one cause of action for penalties under PAGA
9 under the following legal theories: (1) failure to pay all wages for all hours worked, including,
10 but not limited to, for off-the-clock work; (2) failure to pay all overtime and/or double time
11 wages; (3) failure to pay overtime wages at the correct regular rates of pay; (4) failure to pay
12 minimum wages; (5) failure to provide compliant rest periods and to pay related rest period
13 premiums of one additional hour of pay at each Covered Employee's regular rate of
14 compensation for each work day that one or more rest periods was not provided; (6) failure to
15 provide compliant meal periods and to pay related meal period premiums of one additional
16 hour of pay at each Covered Employee's regular rate of compensation for each work day that
17 one or more meal periods was not provided; (7) failure to timely pay all wages during
18 employment as required by applicable law; (8) failure to timely pay all wages at termination,
19 and failure to pay applicable waiting time penalties; (9) unlawful taking, confiscation,
20 conversion, collection, interference with, receiving and/or handling of gratuities (tips) left by
21 patrons, and failure to return, pay and/or provide all gratuities in a timely fashion, and failure to
22 keep accurate records of all gratuities received; (10) failure to provide compliant, complete and
23 accurate itemized wage statements; (11) failure to maintain accurate and complete timekeeping
24 and payroll records; (12) failure to reimburse all necessary business expenses, losses and/or
25 costs; (13) failure to provide sick pay and to provide notice of sick pay rights; (14) failure to
26 provide Workers' Compensation insurance coverage; (15) violations of Labor Code section
27 558; (16) unlawful time rounding policies and procedures; and (17) unfair business practices in
28 violation of Business & Professions Code section 17200.

C. According to Defendant's records, it has employed approximately 317

1 Aggrieved Employees from November 19, 2019 through July 30, 2021, and it is estimated that
2 these Aggrieved Employees worked approximately 4000 pay periods for that same time
3 period.

4 D. Defendant denies any liability or wrongdoing of any kind whatsoever associated
5 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
6 finally, and forever compromise, release and discharge all claims, liabilities and/or causes of
7 action, known or unknown, suspected or not suspected, arising from, related to or attributable
8 to the claims and/or allegations alleged in the Action or Plaintiff's Notice to the LWDA dated
9 November 19, 2020, including all claims, liabilities and/or causes of action for civil penalties
10 for violations allegedly occurring during the Covered Period that Plaintiff, the Covered
11 Employees, and/or the State of California may have under the California Labor Code, IWC
12 Wage Orders, state and/or federal regulations, and/or any other provisions of state and/or
13 federal law, whether known or unknown, suspected or unsuspected, arising from, related to, or
14 attributable to any allegations that Plaintiff and/or the Covered Employees suffered Labor Code
15 and/or other violations based on and/or for (1) failure to pay all wages for all hours worked,
16 including, but not limited to, for off-the-clock work; (2) failure to pay all overtime and/or
17 double time wages; (3) failure to pay overtime wages at the correct regular rates of pay; (4)
18 failure to pay minimum wages; (5) failure to provide compliant rest periods and to pay related
19 rest period premiums of one additional hour of pay at each Covered Employee's regular rate of
20 compensation for each work day that one or more rest periods was not provided; (6) failure to
21 provide compliant meal periods and to pay related meal period premiums of one additional
22 hour of pay at each Covered Employee's regular rate of compensation for each work day that
23 one or more meal periods was not provided; (7) failure to timely pay all wages during
24 employment as required by applicable law; (8) failure to timely pay all wages at termination,
25 and failure to pay applicable waiting time penalties; (9) unlawful taking, confiscation,
26 conversion, collection, interference with, receiving and/or handling of gratuities (tips) left by
27 patrons, and failure to return, pay and/or provide all gratuities in a timely fashion, and failure to
28 keep accurate records of all gratuities received; (10) failure to provide compliant, complete and
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1 and payroll records; (12) failure to reimburse all necessary business expenses, losses and/or
2 costs; (13) failure to provide sick pay and to provide notice of sick pay rights; (14) failure to
3 provide Workers' Compensation insurance coverage; (15) violations of Labor Code section
4 558; (16) unlawful time rounding policies and procedures; (17) unfair business practices
5 (Business & Professions code section 17200); (18) any other Labor Code violations alleged in
6 the Litigation, or that could have been alleged in the Litigation based on the facts alleged in the
7 Litigation; and (19) any other Labor Code violations based on, arising from, related to, or
8 attributable to the facts alleged and contentions raised in the LWDA Notice and/or Plaintiff's
9 State Court Complaint, which include, but are not limited to, alleged violations of Labor Code
10 sections 201-204, 204b, 210, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 558.1, 1174,
11 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3700.5; the IWC Wage
12 Orders, including Wage Order nos. 4 and 9; Business & Professions Code section 17200; and
13 the California Code of Regulations. Additionally, the Parties' Settlement Agreement includes a
14 California Civil Code section 1542 waiver of the Released Persons (as defined in the
15 "Settlement Agreement") as to the Released Claims only.

16 E. On August 17, 2021, the Parties attended a full day mediation session with
17 Experienced wage-and-hour mediator Michelle Reinglass. At the mediation, the Parties agreed
18 to settle the entire action, including the Representative PAGA claim for violation of Labor Code
19 § 2698, *et seq.* Before agreeing to the terms of the Settlement, the Parties engaged in informal
20 discovery regarding Defendant's policies, practices, operations, time and payroll information
21 and other topics. In advance of mediation, Defendant produced Plaintiff's personnel file,
22 including time and payroll data for Plaintiff and also produced the time records and payroll
23 records for 166 aggrieved employees. Through extensive arm's length negotiations at the
24 mediation (for approximately 10 hours) and only after discovery and investigation were
performed, the Parties agreed to settlement terms.

25 F. The Parties conducted investigation of the facts and law both before and after the
26 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
27 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
28 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,
the Parties and their respective counsel are of the opinion that the Settlement for the

1 consideration and on the terms set forth in the PAGA settlement agreement are fair, reasonable
2 and adequate and are in the best interests of the State of California, Plaintiff and the Aggrieved
3 Employees in light of all known facts and circumstances and the risks inherent in litigation,
4 especially in this pandemic era when most businesses are struggling to remain afloat, much less
5 prosper and make a large profit.

6 G. Plaintiff further recognizes that the issues presented in the Representative
7 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
8 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
9 and expense disproportionate to the maximum potential benefits that may be received in
10 connection with the Representative PAGA Claim, especially in light of the pandemic era and
11 the business climate. *See* Declaration of Harout Messrelian, Plaintiff's counsel, at paragraph 10,
12 filed concurrently.

13 **III. FAIRNESS OF THE SETTLEMENT**

14 A. While this *Michael Nevarez* lawsuit is a Representative PAGA Claim, the Parties
15 are not obligated to follow the class action procedural rules for obtaining approval of this
16 settlement. *Arias v. Superior Court (Angelo Dairy)* (2009) 46 Cal.4th 969.

17 B. Plaintiff alleges that the strongest claims, especially on paper, are that Plaintiff and
18 other Aggrieved Employees were not provided timely, uninterrupted meal breaks and were not
19 reimbursed for all business expenses. In terms of Plaintiff's other claims for minimum wage
20 violations, failure to compensate for all hours worked, and failure to pay overtime, no rounding
21 issues were observed. In terms of rest breaks, there was nothing observed in the data that
22 indicated any facial violations. Furthermore, Defendant's written meal and rest break policies
23 were compliant, the analyzed sample did include meal break premiums being paid to employees,
24 employees did sign meal break waivers, and Defendant's system did in fact remind employees
25 of meal and rest break obligations. Additionally, the other associated PAGA claims are derivative
26 to the meal break allegations for which Defendant would not have additional liability for
27 inaccurate pay stubs, failure to pay all wages owed, failure to keep accurate payroll records, and
28 failure to pay wages at the end of employment.

C. Plaintiff contends that the civil penalty statutes applicable to the Representative
PAGA Claim are Labor Code §§ 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, 2802 and
2699(f)(2). Under these civil penalty statutes, an employee who suffers a Labor Code violation,

1 may be awarded a sum of money for each pay period in which he or she was underpaid. However,
2 under Labor Code § 2699(e)(2), the Court can reduce an award of civil penalties if the award is
3 unjust, arbitrary, oppressive, or confiscatory.

4 D. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
5 **maximum** potential exposure of approximately \$490,000 for civil penalties for what Plaintiff
6 contends are Plaintiff's strongest disputed claims of failure to provide meal periods and failure
7 to reimburse all business expenses. Plaintiff's analysis, which Defendant vehemently disputes,
8 revealed a 45% violation rate for either late, short, or interrupted meal periods. As such, with the
9 45% violation rate, the maximum exposure would be \$90,000, which is calculated as \$50 penalty
10 multiplied by 1800 pay periods (45% of the 4000 pay periods). It is important to note that
11 Defendant refutes Plaintiff's above analysis and calculations. Assuming that Plaintiff's
12 calculations and analysis is accurate, the maximum exposure presumes that the Court will not
13 reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. As far as the claim for
14 business expense reimbursement, Plaintiff's theory is that Defendant's reimbursed only 45 cents
15 per mile as opposed to the IRS rate of 57.5 cents. Defendant contends that there is no legal
16 requirement that an employer pay the IRS rate for mileage reimbursement. The maximum
17 exposure for the unreimbursed business expenses would be \$400,000, which is calculated as \$100
18 penalty multiplied by 4000 pay periods. Moreover, Plaintiff's estimate presumes that the Court
19 will find Defendant liable for the maximum possible civil penalty for failure to reimburse
20 business expenses for every paycheck Defendant issued to the Aggrieved Employees; and not
21 reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. In addition, Plaintiff's
22 estimate presumes that every single one of the over 300 employees was not reimbursed for
23 reasonable and necessary business expenses during every single pay period during the statutory
24 period. This is a highly unlikely result and not in line with reality, especially since Defendant
25 amended its policies and practices in February 2021.

26 D. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff
27 multiple PAGA penalties for the same violation for the same pay period under different Labor
28 Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack"
civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
extremely small sums to PAGA claimants in the past. In addition, Defendant would make an
argument under *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (Cal. App. 2d

1 Dist., Sept. 26, 2019) and other similar cases, that meal period or expense reimbursement
2 violations are not a predicate for civil penalties for improper wage statements and untimely final
3 wages under Labor Code secs.201-203, 226, 226.3, and 2699. Defendant also adamantly disputes
4 all of Plaintiff's allegations in the operative Complaint.

5 E. The source of penalties available is under PAGA, which allows employees to seek
6 civil penalties for certain violations of the Labor Code so long as the penalties are not unjust,
7 arbitrary, oppressive, or confiscatory. There are no State Court decisions under the PAGA to date
8 with substantial awards of civil penalties. There is a substantial risk that the Court could reduce
9 civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful
10 and intentional conduct. The PAGA expressly counsels against such awards. *See Lab. Code* §
11 2699(e)(2) ("...a court may award a lesser amount than the maximum civil penalty amount
12 specified by this part if, based on the facts and circumstances of the particular case, to do
13 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").
14 Further, although, class certification is not required for a PAGA claim, Defendant could contend
15 that Plaintiff should show that the PAGA claims are manageable.

16 F. As such, Defendant could also convince the Court to dismiss the claims due to
17 unmanageability. In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it
18 was unmanageable. 2014 WL 1117614, at *3-4 (N.D. Cal. 2014). The Ortiz court cited the
19 "multitude of individualized assessments" that case would have required in ordering dismissal.
20 *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims where, as here,
21 there are a large number of allegedly aggrieved individuals whose claims require individual
22 assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3 (C.D. Cal. 2014);
23 *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015); *see also Stafford v.*
24 *Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2-4 (E.D. Cal. 2014) (bifurcating trial of
25 plaintiff's claim from representative claims: "in light of the number of potential aggrieved
26 employees, judicial economy favors deferring the representative portion of the PAGA claim");
27 *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). DS, ¶ 24. The
28 risk of an unmanageable trial is heightened in a representative PAGA claim because the burden
of proof rests with the plaintiff to establish violations of the Labor Code "with respect to each and
every individual on whose behalf [they] seek[] to recover civil penalties." *Molina v. Dollar Tree*

1 *Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D. Cal. Aug. 9, 2013); *Hibbs-Rines v.*
2 *Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal. Mar. 2, 2009). Moreover, in a PAGA
3 case the plaintiff must prove liability with respect to “each and every individual” through
4 representative evidence – but without sacrificing the defendant’s due process right to present
5 proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal. 4th 1337, 1357 (2007);
6 *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v. U.S. Bank Nat’l Ass’n*, 59
7 Cal. 4th 1, 33-34 (2014). Plaintiff is required to establish a violation of the Labor Code in each
8 pay period of each and every one of the Covered Employees. The Court could find that this is an
9 impractical task and require the Covered Employees to bring individual claims instead of a PAGA
10 representative claim.

11 G. Plaintiff further recognizes that the issues presented in the Representative
12 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
13 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
14 and expense disproportionate to the maximum potential benefits to the Covered Employees and
15 Plaintiff that may be received in connection with continued litigation of the Representative
16 PAGA Claim, especially in the pandemic era where further and extensive litigation may cause
17 businesses to shut down, resulting in no monetary compensation to Plaintiff, Plaintiff’s attorneys,
18 other Aggrieved Employees, and the State of California.

19 H. The settlement of the Representative PAGA Claim involves monetary relief to all
20 Aggrieved Employees, Plaintiff, his attorneys, and the State of California.

21 I. Furthermore, Plaintiff recognizes that continued litigation presents significant
22 risks that support a significant downward departure from Plaintiff’s estimated civil penalties
23 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
24 compromise amount for these claims and is in the best interest of Plaintiff, Covered Employees
25 and the State of California and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*,
26 Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and
27 its terms are fair, just, reasonable, adequate, and equitable to Defendant, Plaintiff, and the State,
28 especially in light of the current economic climate, and are the product of good faith, and
informed arms-length negotiations between the Parties consistent with public policy and fully
comply with applicable provisions of law. *See Declaration of Harout Messrelian*, Plaintiff’s

counsel, at paragraph 19, filed concurrently.

IV. TERMS AND PROCEDURES OF THE SETTLEMENT

A. The Settlement covers any and all civil penalties claims arising from Plaintiff's allegations in his Complaint, including alleged violations of Labor Code sections 201-204, 204b, 210, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3700.5; the IWC Wage Orders, including Wage Order nos. 4 and 9; Business and Professions Code section 17200; and the California Code of Regulations. Additionally, the Parties' Settlement Agreement includes a California Civil Code section 1542 waiver of the Released Persons (as defined in the "Settlement Agreement") as to the Released Claims only.

B. Subject to the Court's approval of the Settlement Agreement and as set forth in more detail in the Settlement Agreement, Defendant agrees in the Settlement Agreement to pay \$135,000.00 toward the Settlement (the "Gross Settlement Amount" or "GSA") which will be distributed by Defendant as follows:

1. \$45,000.00 (33 1/3% of the GSA) in attorneys' fees to Harout Messrelian, Esq. of Messrelian Law Inc.

2. \$6,729.22 in attorney litigation costs to Harout Messrelian, Esq. of Messrelian Law Inc.

3. \$3,850.00 in PAGA Settlement Administrator costs to the Settlement Administrators (Phoenix).

4. \$79,420.78 (the "Net Settlement Amount" or "NSA") will be divided as follows:

a. \$59,565.59 (75% of "NSA") to the LWDA, which represents civil penalties payable to the LWDA under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code section 2698, *et seq.*; and

b. \$19,855.19 (25% of NSA) (the "Aggrieved Employee Amount") to the Aggrieved Employees which represents civil penalties payable to the Aggrieved Employees as compensation for civil penalties that are allegedly owed on the Representative PAGA Claim and Released Claims for the period from November 19, 2019 through Approval of the Settlement.

C. The Aggrieved Employee Amount shall be divided amongst Plaintiff and the

Aggrieved Employees based on their number of pay periods worked during the “Covered Period,” with the “Covered Period” defined as the time period running from November 19, 2019 to the date this Court grants final approval of the Settlement. More specifically, Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved Employee Amount on a pro-rata basis by multiplying the Aggrieved Employee Amount by the ratio of (i) the number of pay periods worked by the Aggrieved Employee during the Covered Period and (ii) the total number of pay periods worked by all Aggrieved Employees during the Covered Period.

D. For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved Employee Settlement Award shall be considered to be a civil penalty or miscellaneous income and shall not be subject to withholding, unless otherwise required by law. The Claims Administrator shall file proof of payment.

V. THE PROPOSED FEE AMOUNT FOR ATTORNEYS’ FEES AND COST AMOUNT FOR LITIGATION EXPENSES IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED

A. Plaintiff’s counsel represents Plaintiff on a straight contingency basis. Plaintiff counsel’s request for \$45,000.00 in attorney fees and \$6,729.22 in litigation costs to be paid from the Gross Settlement Amount is fair and reasonable. “Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting Shaw v. Toshiba America Information Systems, Inc. (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also* Lafitte v. Robert Half Int’l Inc. (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage method for the calculation of attorneys’ fees). This is also consistent with Plaintiff’s Counsel’s experience in cases involving PAGA claims. This award is justified here because Plaintiff’s counsel achieved a strong result for the Aggrieved Employees and the State while bearing the substantial burdens of contingency representation. *See* Declaration of Harout Messrelian, Plaintiff’s counsel, at paragraph 21, filed concurrently.

B. It is an accepted practice in wage and hour class action settlements to award attorneys’ fees to Plaintiff’s Counsel based on a percentage of the total settlement value agreed upon by the parties. California courts have long recognized that an appropriate method for

1 awarding attorneys' fees in class actions is to award a percentage of the common fund. (Serrano
2 v. Priest (1977), 20 Cal.3d. 25, 48-49 ["when a number of persons are entitled in common to a
3 specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the
4 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees
5 out of the fund"]; Wershba v. Apple Computer, Inc. (2001), 91 Cal.App.4th, 230, 254; Lealao v.
6 Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26-30.)

7 C. The litigation costs expended to aid in the representation of the Aggrieved
8 Employees include the following : lawsuit filing fee of \$454.22, PAGA initial filing fee of \$75.00,
9 a mediation fee of \$5,250.00 (for Plaintiff's portion of the mediation); and expert data analysis
10 fee of \$950.00. All of these costs are documented and reasonably incurred. *See* Declaration of
11 Harout Messrelian, Plaintiff's counsel, at paragraph 22, filed concurrently.

12 **VI. NO ADMISSION OF LIABILITY OR WRONGDOING**

13 The payment of consideration or any other obligation are not and shall not be construed
14 in any way as an admission of wrongdoing or liability on the part of Defendant, or any other
15 person or business entity. Defendant adamantly denies all allegations of wrongdoing arising out
16 of the employment relationship between the Parties, including the Aggrieved Employees, and
17 contends that it has acted in accordance with all legal requirements at all times, including
18 complying with all of its obligations to employees under the California Labor Code and IWC
19 Wage Orders. The Parties intend merely to avoid the expense, delay, uncertainty and burden of
20 continued litigation.

21 **VII. PAGA SETTLEMENT ADMINISTRATION**

- 22 A. The Parties agree to use PHOENIX SETTLEMENT ADMINISTRATOR to handle the
23 administration of this Settlement.
- 24 B. No later than thirty (30) calendar days after the Effective Date (defined as the date the
25 Court grants approval of the Settlement Agreement), Defendant shall provide the
26 Settlement Administrator with a list of all Covered Employees ("Covered Employees
27 List"). The Covered Employees List will include each Covered Employee's: (1) name;
28 (2) last known address; (3) number of pay periods as a Covered Employee during the
Covered Period; and (4) social security number. The Covered Employee List and
information contained therein shall be treated as and remain confidential, shall be used
solely by the Settlement Administrator to manage the notice and payment process

1 described herein, and shall not be disclosed to anyone other than the Settlement
2 Administrator, except to applicable taxing authorities, or pursuant to express written
3 authorization of Defendant or the individual in question, or by order of the Court. In the
4 event that the Settlement Administrator receives a subpoena for the production of
5 documents or information reflecting the information provided by Defendant pursuant to
6 this paragraph, the Settlement Administrator shall promptly notify Defendant and provide
7 a copy of any such subpoena. The Settlement Administrator shall run all the addresses
8 provided through the United States Postal Service NCOA database (which provides
9 updated addresses for any individual who has moved in the previous four years who has
10 notified the U.S. Postal Service of a forwarding address) to obtain current address
11 information.

- 11 C. In the same period, no later than thirty (30) calendar days after the Effective Date,
12 Defendant shall deposit the Gross Settlement Amount into a qualified settlement account
13 (to be established by the Settlement Administrator). However, in no event shall
14 Defendant be required to deposit the Gross Settlement Amount before the judgment of
15 the Court granting approval of the Settlement is final and no longer subject to appeal.
- 16 D. No later than ten (10) calendar days after the receipt of the Covered Employees List and
17 the deposit of the full Gross Settlement Amount, the Settlement Administrator shall mail
18 the Notice (attached hereto as part of Exhibit A) together with settlement payments to all
19 Covered Employees by first-class United States mail, postage prepaid, to the last known
20 address of each recipient. The Settlement Administrator shall direct the Postmaster to
21 forward any undeliverable Notices and settlement payment to the Settlement
22 Administrator. For each Notice and settlement payment that is returned as undeliverable,
23 the Settlement Administrator shall promptly attempt to locate the Covered Employee by
24 using an address refresher database. At the same time, no later than ten (10) calendar
25 days after the receipt of the Covered Employees List and deposit of the full Gross
26 Settlement Amount, the Settlement Administrator shall disburse seventy-five percent of
27 the Net Settlement Amount to the LWDA and Plaintiff will provide notice to the LWDA
28 of the fact that the settlement has been approved by the Court along with a copy of the
Settlement Agreement and the Court order and judgment confirming the approval of the
settlement.

- 1 E. Payment of PAGA Penalties. Covered Employees will receive a lump sum payment in
2 an amount determined by the Settlement Administrator in accordance with the provisions
3 of the parties' Settlement Agreement. The Net Settlement Amount ("NSA") is computed
4 by subtracting from the Gross Settlement Amount the court approved amounts of: the
5 attorney's fees and Litigation costs awarded to counsel for Plaintiff (if any), and the
6 Administrative Costs.
- 7 F. Seventy-five percent (75%) of the NSA shall be paid to the LWDA; the remaining twenty-
8 five percent (25%) of the NSA shall be paid to Covered Employees based on the
9 following formula:
- 10 a. The Covered Employee portion of the NSA (25%) shall be divided amongst the
11 Covered Employees based on their number of pay periods worked during the
12 Covered Period as reflected in Defendant's records. Specifically, the Covered
13 Employee portion of the NSA (25%) shall be divided by the total pay periods
14 worked by all Covered Employees during the Covered Period as reflected in
15 Defendant's records to yield the "Employee Settlement Share Value." Each
16 Covered Employee shall be paid an amount equal to the number of total pay
17 periods they worked for Defendant during the Covered Period multiplied by the
18 Employee Settlement Share Value.
- 19 G. The settlement checks issued to each Covered Employee shall remain valid for one
20 hundred eighty (180) days from the date of issuance. Funds represented by settlement
21 checks returned as undeliverable and those settlement checks remaining uncashed for
22 more than one hundred eighty days after issuance shall be voided and then shall be
23 transmitted to the Controller of the State of California to be held pursuant to the
24 Unclaimed Property Law, California Code of Civil Procedure section 1500, et seq. in the
25 names of those Covered Employees who did not cash their settlement checks until such
26 time they claim their property. Defendant will not be required to pay any interest on any
27 settlement funds distributed to the Settlement Administrator.
- 28 H. If a check is returned to the Settlement Administrator as undeliverable, the Settlement
Administrator shall promptly attempt to obtain a valid mailing address by performing a
skip trace search and, if another address is identified, shall mail the check to the newly
identified address. If the Settlement Administrator is unable to obtain a valid mailing

1 address through this process, the monies represented by the check shall be turned over
2 according to the procedures outlined immediately above.

3 **VIII. TAXES**

4 Plaintiff and each Aggrieved Employee bear full responsibility for the payment of any
5 taxes or withholdings arising from the Aggrieved Employee Settlement Awards paid to them.

6
7 **IX. RELEASED CLAIMS**

8 Upon the approval by the Court of this Settlement, Plaintiff, the Covered Employees,
9 and the State of California hereby release the Released Persons (as defined in the “Settlement
10 Agreement”) from all claims, liabilities and/or causes of action for civil penalties for violations
11 allegedly occurring during the Covered Period that Plaintiff, the Covered Employees, and/or
12 the State of California may have under the California Labor Code, IWC Wage Orders, state
13 and/or federal regulations, and/or any other provisions of state and/or federal law, whether
14 known or unknown, suspected or unsuspected, arising from, related to, or attributable to any
15 allegations that Plaintiff and/or the Covered Employees suffered Labor Code and/or other
16 violations based on and/or for (1) failure to pay all wages for all hours worked, including, but
17 not limited to, for off-the-clock work; (2) failure to pay all overtime and/or double time wages;
18 (3) failure to pay overtime wages at the correct regular rates of pay; (4) failure to pay minimum
19 wages; (5) failure to provide compliant rest periods and to pay related rest period premiums of
20 one additional hour of pay at each Covered Employee’s regular rate of compensation for each
21 work day that one or more rest periods was not provided; (6) failure to provide compliant meal
22 periods and to pay related meal period premiums of one additional hour of pay at each Covered
23 Employee’s regular rate of compensation for each work day that one or more meal periods was
24 not provided; (7) failure to timely pay all wages during employment as required by applicable
25 law; (8) failure to timely pay all wages at termination, and failure to pay applicable waiting
26 time penalties; (9) unlawful taking, confiscation, conversion, collection, interference with,
27 receiving and/or handling of gratuities (tips) left by patrons, and failure to return, pay and/or
28 provide all gratuities in a timely fashion, and failure to keep accurate records of all gratuities

received; (10) failure to provide compliant, complete and accurate itemized wage statements; (11) failure to maintain accurate and complete timekeeping and payroll records; (12) failure to reimburse all necessary business expenses, losses and/or costs; (13) failure to provide sick pay and to provide notice of sick pay rights; (14) failure to provide Workers' Compensation insurance coverage; (15) violations of Labor Code section 558; (16) unlawful time rounding policies and procedures; (17) unfair business practices (Business & Professions code section 17200); (18) any other Labor Code violations alleged in the Litigation, or that could have been alleged in the Litigation based on the facts alleged in the Litigation; and (19) any other Labor Code violations based on, arising from, related to, or attributable to the facts alleged and contentions raised in the LWDA Notice and/or Plaintiff's State Court Complaint, which include, but are not limited to, alleged violations of Labor Code sections 201-204, 204b, 210, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3700.5; the IWC Wage Orders, including Wage Order nos. 4 and 9; Business & Professions Code section 17200; and the California Code of Regulations. Additionally, the Parties' Settlement Agreement includes a California Civil Code section 1542 waiver of the Released Persons (as defined in the "Settlement Agreement") as to the Released Claims only.

Plaintiff entered into a confidential individual settlement agreement with Defendant to settle his individual claims. As part of this confidential agreement, Plaintiff also provided Defendant with a general release of all claims, whether known or unknown, including unknown claims covered by Civil Code Section 1542. *See*, Declaration of Harout Messrelian ¶ 23.

X. CONCLUSION

Plaintiff respectfully requests the Court grant this Motion for Approval of the PAGA settlement.

Respectfully Submitted,

MESSRELIAN LAW INC.

DATED: January 21, 2022

By

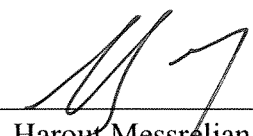

Harout Messrelian, Esq.
Attorneys for Plaintiff
MICHAEL NEVAREZ

EXHIBIT A

JOINT STIPULATION OF PAGA SETTLEMENT AGREEMENT AND

RELEASE

Plaintiff Michael Nevarez ("Plaintiff"), on his own behalf and on behalf of all Covered Employees, as defined below, and on behalf of the State of California, on the one hand, and Defendant Lynwood Roads Delivery, LLC ("Defendant") on the other hand (collectively, the "Parties"), hereby stipulate and agree to the following binding settlement pursuant to the terms and conditions set forth below. Once approved by the Court (as defined below), this settlement shall be binding under the terms stated herein.

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including cost of notice to the Covered Employees, claims administration, settlement administration and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Joint Stipulation of PAGA Settlement Agreement and Release. The Parties agree that the Administrative Costs shall not exceed \$5,000.00.

B. Agreement. The terms "Agreement", "Settlement" or "Settlement Agreement" are used synonymously herein to mean this Joint Stipulation of PAGA Settlement Agreement and Release.

C. Court. The term "Court" as used herein means the Superior Court of the State of California for the County of Los Angeles.

D. Covered Employees. The term "Covered Employees" or "Aggrieved Employees" as used herein means all current and former non-exempt employees of Defendant (including, but not limited to, Plaintiff), who were employed by Defendant in California at any time during the Covered Period. The Parties estimate that there were approximately 317 Covered Employees as of July 30, 2021. It is estimated that these Covered Employees worked approximately 4,000 pay periods as of July 30, 2021.

E. Covered Period. The term “Covered Period” or “PAGA Period” as used herein means the time period from November 19, 2019 to the date the Court grants approval of this Settlement.

F. Defendant. The term “Defendant” as used herein shall mean Defendant Lynwood Roads Delivery, LLC.

G. Defense Counsel. The term “Defense Counsel” shall mean and refer to Karla J. Kraft and John M. Wicker from Stradling Yocca Carlson & Rauth, A Professional Corporation. Defense Counsel’s address is 660 Newport Center Drive, Suite 1600, Newport Beach, CA 92660.

H. Effective Date. The date that the Court grants approval of this Agreement will be the Effective Date.

I. Gross Settlement Amount. The term “Gross Settlement Amount” as used herein means the total amount to be paid by Defendant pursuant to this Agreement, equaling no more than One Hundred and Thirty Five Thousand Dollars and Zero Cents (\$135,000.00) under any circumstances. All payments associated with this Agreement shall be paid from the Gross Settlement Amount, including all of the following: all civil penalty payments to the Covered Employees and the California Labor and Workforce Development Agency (“LWDA”) pursuant to the California Labor Code Private Attorneys General Act of 2004, including all amendments thereto, California Labor Code § 2698 (the “PAGA”), all Court-approved attorneys’ fees and Litigation costs, all Administrative Costs, all expenses, all statutory penalties, all interest, and all employment taxes if any are owed.

J. Lawsuit. The term “Lawsuit”, “Litigation”, or “Action” as used herein means the action entitled *Michael Nevarez v. Lynwood Roads Delivery, LLC, et al.*, as memorialized in Plaintiff’s LWDA Notice, as well as the State Court Case and Complaint asserting the claims contained in Plaintiff’s LWDA notice that this Agreement contemplates being filed (as discussed in further detail below). However, as discussed in further detail below, Plaintiff’s State Court Case and Complaint will not name any individual Defendants, including Trevor Mayer, who was

improperly named in the LWDA Notice and cannot be liable as a matter of law, given that Trevor Mayer never employed Plaintiff or any of the Covered Employees or controlled their wages, hours or working conditions. A copy of Plaintiff's State Court Complaint this Agreement contemplates being filed in connection with initiating Plaintiff's State Court Case is attached hereto as Exhibit B.

K. LWDA Notice. The term "LWDA Notice" as used herein shall mean Plaintiff's Notice to the California Labor and Workforce Development Agency dated November 19, 2020, and sent to Defendant by U.S. Certified Mail on November 19, 2020, a copy of which is attached hereto as Exhibit A.

L. Net Settlement Amount. The term "Net Settlement Amount" or "NSA" as used herein means the Gross Settlement Amount minus any award of attorneys' fees and Litigation costs, and Administrative Costs.

M. Plaintiff. The term "Plaintiff" as used herein means Michael Nevarez.

N. Plaintiff's Counsel. The term "Plaintiff's Counsel" as used herein shall mean Harout Messrelian of Messrelian Law. Plaintiff's Counsel's address is 500 N. Central Avenue, Suite 840, Glendale, California, 91203.

O. Released Persons. The term "Released Persons" shall mean Defendant, Amuse Holdings, Inc., Open Road Delivery Holdings, Inc., Redwood Road Delivery, Inc., Highwood Delivery Services, LLC, Pinewood Fleet Services, LLC, NCC Brisbane, LLC, Gotham Green Partners, LLC and Natural Plant Extract of California, Inc., and each of their parent, subsidiary, related, and/or affiliate entities, and each of their predecessors, successors, and assigns, and each of their respective past and present members, shareholders, owners, partners, directors, officers, employees, attorneys, insurers, servants, investors, joint employers, founders, managers, managing agents, lenders, representatives and agents (including, but not limited to, Trevor Mayer), and as to any individual their marital community, community property, trustees, executors, heirs, guardians and registered representatives. Without in any way limiting the

foregoing, “Released Persons” expressly includes any individual or entity which could be jointly and/or severally liable with Defendant.

P. Settlement Administrator. The term “Settlement Administrator” as used herein means Phoenix Settlement Administrators, which will be responsible for the administration of the Gross Settlement Amount, as defined below, and all related matters, including all matters regarding settlement administration.

II. BACKGROUND

From approximately October 13, 2020 to November 4, 2020, Plaintiff was employed by Defendant as a delivery driver. Plaintiff claims that he and the Covered Employees suffered various violations of the California Labor Code due to Defendant’s allegedly unlawful labor policies and practices, as alleged in the LWDA Notice. Specifically, Plaintiff alleges in the Litigation that Defendant committed the following labor violations against the Covered Employees, including himself: (1) failure to pay all wages for all hours worked, including, but not limited to, for off-the-clock work; (2) failure to pay all overtime and/or double time wages; (3) failure to pay overtime wages at the correct regular rates of pay; (4) failure to pay minimum wages; (5) failure to provide compliant rest periods and to pay related rest period premiums of one additional hour of pay at each Covered Employee’s regular rate of compensation for each work day that one or more rest periods was not provided; (6) failure to provide compliant meal periods and to pay related meal period premiums of one additional hour of pay at each Covered Employee’s regular rate of compensation for each work day that one or more meal periods was not provided; (7) failure to timely pay all wages during employment as required by applicable law; (8) failure to timely pay all wages at termination, and failure to pay applicable waiting time penalties; (9) unlawful taking, confiscation, conversion, collection, interference with, receiving and/or handling of gratuities (tips) left by patrons, and failure to return, pay and/or provide all gratuities in a timely fashion, and failure to keep accurate records of all gratuities received; (10) failure to provide compliant, complete and accurate itemized wage statements; (11) failure to maintain accurate and complete timekeeping and payroll records; (12) failure to reimburse all

necessary business expenses, losses and/or costs; (13) failure to provide sick pay and to provide notice of sick pay rights; (14) failure to provide Workers' Compensation insurance coverage; (15) violations of Labor Code section 558; (16) unlawful time rounding policies and procedures; and (17) unfair business practices in violation of Business & Professions Code section 17200.

As part of this Agreement, Plaintiff will and is required to file a State Court Case in Los Angeles County Superior Court asserting such claims against Defendant within five (5) business days of this Agreement being fully executed by the Parties, to obtain approval of this settlement, which shall fully and finally resolve all claims in the State Court Case from the Los Angeles County Superior Court, and to take any and all other steps necessary to cause such claims to be fully, finally and forever released with prejudice by the Covered Employees for the Covered Period. However, the Parties agree that Plaintiff's state court action and Complaint will not name any individual Defendants, including Trevor Mayer, who was improperly named in the LWDA notice and cannot be liable as a matter of law, given that Trevor Mayer never employed Plaintiff or any of the Covered Employees or controlled their wages, hours or working conditions. A copy of Plaintiff's State Court Complaint is attached hereto as Exhibit B. Defendant denies and disputes all of Plaintiff's alleged claims and allegations.

Defendant is a new start-up Company that hired its first non-exempt employee in mid-2020. Before reaching the proposed Settlement, the Parties litigated this action. On August 17, 2021, the Parties attended a full-day mediation with mediator Michelle Reinglass, an experienced employment law and PAGA action mediator, during which the Parties discussed and mediated all of the claims asserted in Plaintiff's LWDA Notice. Prior to and in connection with the Parties' mediation, Defense Counsel provided Plaintiff's Counsel with the information requested by Plaintiff's Counsel to evaluate Plaintiff's asserted claims and allegations, as outlined in the LWDA Notice. Specifically, Defense Counsel provided Plaintiff's Counsel with information regarding the Covered Employees, including information regarding the number of Covered Employees, their rates of pay, and dates of employment, as well as daily time punch and payroll records for the Covered Employees. Defendant also produced its wage and hour policy and

procedure related documents, including relevant portions of its employee handbooks and standalone policies. During the mediation, the Parties engaged in extensive good-faith arms-length negotiations for approximately 10 hours concerning possible resolution of the Litigation, and were ultimately able to reach an agreement on the terms of a settlement to resolve the Litigation in accordance with the terms set forth in this Agreement. The Parties thereafter conducted further negotiations regarding the terms and conditions of the Settlement before agreeing to this Agreement, which the Parties will submit for Court approval.

Plaintiff's Counsel has conducted an investigation of the law and facts relating to the claims asserted in the Litigation and has concluded, taking into account the sharply contested issues involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be received by the Plaintiff and Covered Employees pursuant to this Agreement, that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable, and adequate. Plaintiff, on his own behalf and on behalf of Covered Employees, has agreed to settle the Litigation with Defendant on the terms set forth herein.

Defendant denies each of the allegations and claims asserted against it in the Litigation, and denies any liability to the Covered Employees including Plaintiff. However, Defendant nevertheless desires to settle the Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

This Agreement is intended to and does effectuate the full, final and complete resolution of all claims for civil penalties that were asserted, or could have been asserted, based on the facts stated in the LWDA Notice and/or Plaintiff's State Court Complaint attached hereto as Exhibit B, as well as all claims for civil penalties, arising from, related to or attributable to the facts and/or claims stated in the LWDA Notice and/or Plaintiff's State Court Complaint attached

hereto as Exhibit B, whether known or unknown, suspected or unsuspected, by Plaintiff and other Covered Employees and the State of California as outlined in Section II herein above.

Under California Law, the State may assess and collect civil penalties from employers for violation of certain provisions of the Labor Code. Cal. Lab. Code §§ 2698 *et seq.* Under PAGA, however, if an “aggrieved employee” “give[s] written notice by online filing [to] the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of [the Labor Code] alleged to have been violated, including the facts and theories to support the alleged violation,” and the Labor and Workforce Development Agency thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not issue, the employee may, “as an alternative” to enforcement by the State, act as a proxy or agent of the state’s labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties “on behalf of himself or herself and other current or former employees.” “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved employees.”

California Labor Code § 2699(1)(2) provides that “The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.”

In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

III. TERMS OF THE SETTLEMENT

Subject to submission of this Settlement Agreement to the LWDA by Plaintiff and no objection or disapproval by the LWDA, and subject to the Court’s approval of the Settlement pursuant to Labor Code section 2699(1)(2), which Defense Counsel, Plaintiff’s Counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement and disposal of the entire Litigation, with prejudice.

A. Consideration. In exchange for the promises and the release of claims of the Covered Employees contained in this Settlement Agreement, Defendant agrees to pay the Settlement Administrator the Gross Settlement Amount in full settlement of the Litigation within thirty (30) calendar days after the Effective Date. However, in no event shall Defendant be required to fund the Gross Settlement Amount before the judgment of the Court granting approval of this Settlement is final and no longer subject to appeal. The Gross Settlement Amount includes all payments associated with this Agreement, including all civil penalty payments to the Covered Employees and the California Labor and Workforce Development Agency ("LWDA") pursuant to the California Labor Code Private Attorneys General Act of 2004, including all amendments thereto, California Labor Code § 2698 (the "PAGA"), all Court-approved attorneys' fees and Litigation costs, all Administrative Costs, all expenses, all statutory penalties, all interest, and all employment taxes. The payments to be made from the Gross Settlement Amount, including the amounts of such payments, are subject to Court approval. The Settlement is non-reversionary and no claim forms need to be submitted. The Net Settlement Amount shall be distributed twenty-five percent (25%) to the Plaintiff and other Covered Employees, and seventy-five percent (75%) to the LWDA. The amount paid to the Covered Employees will be paid out based proportionally on the total number of pay periods during the Covered Period in which they worked, as discussed in further detail herein below.

B. Release of Claims by All Covered Employees (including Plaintiff) and the State of California. As of the Effective Date, regardless of whether they actually receive notice of the Settlement or any payment pursuant to the Settlement, Plaintiff, the Covered Employees, and the State of California hereby release the Released Persons from all claims, liabilities and/or causes of action for civil penalties for violations allegedly occurring during the Covered Period that Plaintiff, the Covered Employees, and/or the State of California may have under the California Labor Code, IWC Wage Orders, state and/or federal regulations, and/or any other provisions of state and/or federal law, whether known or unknown, suspected or unsuspected, arising from, related to, or attributable to any allegations that Plaintiff and/or the Covered

Employees suffered Labor Code and/or other violations based on and/or for (1) failure to pay all wages for all hours worked, including, but not limited to, for off-the-clock work; (2) failure to pay all overtime and/or double time wages; (3) failure to pay overtime wages at the correct regular rates of pay; (4) failure to pay minimum wages; (5) failure to provide compliant rest periods and to pay related rest period premiums of one additional hour of pay at each Covered Employee's regular rate of compensation for each work day that one or more rest periods was not provided; (6) failure to provide compliant meal periods and to pay related meal period premiums of one additional hour of pay at each Covered Employee's regular rate of compensation for each work day that one or more meal periods was not provided; (7) failure to timely pay all wages during employment as required by applicable law; (8) failure to timely pay all wages at termination, and failure to pay applicable waiting time penalties; (9) unlawful taking, confiscation, conversion, collection, interference with, receiving and/or handling of gratuities (tips) left by patrons, and failure to return, pay and/or provide all gratuities in a timely fashion, and failure to keep accurate records of all gratuities received; (10) failure to provide compliant, complete and accurate itemized wage statements; (11) failure to maintain accurate and complete timekeeping and payroll records; (12) failure to reimburse all necessary business expenses, losses and/or costs; (13) failure to provide sick pay and to provide notice of sick pay rights; (14) failure to provide Workers' Compensation insurance coverage; (15) violations of Labor Code section 558; (16) unlawful time rounding policies and procedures; (17) unfair business practices (Business & Professions code section 17200); (18) any other Labor Code violations alleged in the Litigation, or that could have been alleged in the Litigation based on the facts alleged in the Litigation; and (19) any other Labor Code violations based on, arising from, related to, or attributable to the facts alleged and contentions raised in the LWDA Notice and/or Plaintiff's State Court Complaint attached hereto as Exhibit B, which include, but are not limited to, alleged violations of Labor Code sections 201-204, 204b, 210, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3700.5; the IWC Wage Orders, including Wage Order nos. 4 and 9; Business &

Professions Code section 17200; and the California Code of Regulations (the "Released Claims"). Without in any way limiting the foregoing, and for the avoidance of doubt, Plaintiff, the Covered Employees and the State of California release the Released Persons from all of the Released Claims on behalf of themselves and their heirs, executors, representatives, administrators, agents, insurers, successors and assigns. Further, without in any way limiting the foregoing, and for the avoidance of doubt, Plaintiff, the Covered Employees and the State of California also release the Released Persons from any and all claims for attorneys' fees and/or Litigation costs incurred in connection with the Action or otherwise, including, but not limited to, in connection with prosecuting the Released Claims, other than those attorneys' fees and Litigation costs set forth in this Agreement that are to be paid from the Gross Settlement Amount to the extent they are approved by the Court.

Without in any way limiting the foregoing, Plaintiff, the Covered Employees and/or the State of California may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in the Litigation which are the subject matter of the Released Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims.

Further, without in any way limiting the foregoing, Plaintiff, the Covered Employees and the State of California understand that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, arising from, related to or attributable to the Released Claims only. Plaintiff, the Covered Employees and the State of California hereby expressly waive and relinquish any and all claims, rights or benefits that they may have under California Civil Code § 1542 as to the Released Claims only, which provides as follows:

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

Plaintiff, the Covered Employees and/or the State of California may hereafter discover claims or facts in addition to, or different from, those which they know or believe to exist, but Plaintiff, the Covered Employees and the State of California expressly agree to fully, finally and forever settle and release any and all claims against the Released Persons, known or unknown, suspected or unsuspected, which exist or may exist, arising from, related to or attributable to the Released Claims. Plaintiff, the Covered Employees and the State of California further acknowledge, understand and agree that this Agreement would not have been entered into were it not for this representation and commitment.

C. Statement of No Admission. Defendant denies liability to Plaintiff and to the Covered Employees on any and all claims, theories, and/or causes of action asserted or that could have been asserted.

This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Litigation.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement or the Settlement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in

any proceeding before the Court that has as its purpose the approval, interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Settlement. The Parties may also submit the Motion for Approval (as defined below) and the Agreement to the LWDA for the purposes of securing approval of the Settlement.

None of the documents produced or created by Plaintiff or the Covered Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

D. Tax Treatment of PAGA Payments. For withholding tax characterization purposes and payment of taxes, the settlement payments to the Covered Employees shall be deemed and are allocated by the Parties as one-hundred percent penalties, or miscellaneous income, and shall not be subject to withholdings. Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement by the Settlement Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner for compliance with any such changes.

E. Settlement Administrator. Plaintiff, through his counsel, has selected Phoenix Settlement Administrators as the Settlement Administrator to administer the Settlement, which includes but is not limited to distributing and responding to inquiries about the Notice of PAGA Settlement and Release of Claims. The Settlement Administrator shall also be responsible for distributing all payments pursuant to this Agreement, including the payment to the LWDA and all individual payments to the Covered Employees, as well as any and all tax reporting and related matters. The Settlement Administrator shall also be responsible for any other tasks that the Parties mutually agree or the Court orders the Settlement Administrator to perform.

The charges and expenses of the Settlement Administrator shall be paid from the Gross Settlement Amount and shall not exceed \$5,000.00.

F. Notice to Covered Employees and Funding of Settlement. Plaintiff and Defendant, through their respective attorneys, have jointly prepared a Notice of PAGA Settlement and Release of Claims (the "Notice"), which is attached as Exhibit C hereto (and which will also be provided in Spanish). In substance, the Notice will be provided to the Covered Employees as follows:

No later than thirty (30) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of all Covered Employees ("Covered Employees List"). The Covered Employees List will include each Covered Employee's: (1) name; (2) last known address; (3) number of pay periods as a Covered Employee during the Covered Period; and (4) social security number. The Covered Employee List and information contained therein shall be treated as and remain confidential, shall be used solely by the Settlement Administrator to manage the notice and payment process described herein, and shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant or the individual in question, or by order of the Court. In the event that the Settlement Administrator receives a subpoena for the production of documents or information reflecting the information provided by Defendant pursuant to this paragraph, the Settlement Administrator shall promptly notify Defendant and provide a copy of any such subpoena. The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.

In the same period, no later than thirty (30) calendar days after the Effective Date, Defendant shall deposit the Gross Settlement Amount into a qualified settlement account (to be established by the Settlement Administrator).

No later than ten (10) calendar days after the receipt of the Covered Employees List and the deposit of the full Gross Settlement Amount, the Settlement Administrator shall mail the Notice (attached hereto as Exhibit C) together with settlement payments to all Covered Employees (pursuant to the formula in part C below) by first-class United States mail, postage prepaid, to the last known address of each recipient. The Settlement Administrator shall direct the Postmaster to forward any undeliverable Notices and settlement payment to the Settlement Administrator. For each Notice and settlement payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Covered Employee by using an address refresher database. At the same time, no later than ten (10) calendar days after the receipt of the Covered Employees List and deposit of the full Gross Settlement Amount, the Settlement Administrator shall disburse seventy-five percent of the Net Settlement Amount to the LWDA and Plaintiff will provide notice to the LWDA of the fact that the settlement has been approved by the Court along with a copy of the Settlement Agreement and the Court order confirming the approval of the settlement.

G. Payment of PAGA Penalties. Covered Employees will receive a lump sum payment in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement. The Net Settlement Amount ("NSA") is computed by subtracting from the Gross Settlement Amount the court approved amounts of: the attorney's fees and Litigation costs awarded to counsel for Plaintiff (if any), and the Administrative Costs.

Seventy-five percent (75%) of the NSA shall be paid to the LWDA; the remaining twenty-five percent (25%) of the NSA shall be paid to Covered Employees based on the following formula:

The Covered Employee portion of the NSA (25%) (estimated to be \$19,375.00) shall be divided amongst the Covered Employees based on their number of pay periods worked during the Covered Period as reflected in Defendant's records. Specifically, the Covered Employee portion of the NSA (25%) shall be divided by the total pay periods worked by all Covered Employees during the Covered Period as reflected in Defendant's records to yield the "Employee

Settlement Share Value.” Each Covered Employee shall be paid an amount equal to the number of total pay periods they worked for Defendants during the Covered Period multiplied by the Employee Settlement Share Value.

The settlement checks issued to each Covered Employee shall remain valid for one hundred eighty (180) days from the date of issuance. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining uncashed for more than one hundred eighty days after issuance shall be voided and then shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure section 1500, *et seq.* in the names of those Covered Employees who did not cash their settlement checks until such time they claim their property. Defendant will not be required to pay any interest on any settlement funds distributed to the Settlement Administrator.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the monies represented by the check shall be turned over according to the above procedures.

H. Attorneys’ Fees and Litigation Costs. Defendant shall not oppose an application by Plaintiff’s Counsel for, and Plaintiff’s Counsel shall not seek or receive an amount in excess of \$45,000.00, which represents one-third of the Gross Settlement Amount, for all past and future attorneys’ fees necessary to prosecute, settle and administer the Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Plaintiff’s Counsel for, and Plaintiff’s Counsel shall not seek or receive an amount in excess of \$7,500.00, which represents all past and future Litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this Settlement. Any attorneys’ fees or Litigation costs awarded to Plaintiff’s Counsel by the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these amounts includes, without limitation, all time and expenses expended by Plaintiff’s Counsel in defending

the Settlement and securing approval. There will be no additional charge of any kind to either the Covered Employees or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, Litigation costs and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever. No later than forty (40) calendar days following the Effective Date, the Settlement Administrator shall disburse payment from the Gross Settlement Amount for the amount of attorneys' fees and Litigation costs approved by the Court to Plaintiff's Counsel. Should the Court approve a lesser percentage or amount of attorneys' fees and/or Litigation costs than the amount that Plaintiff's Counsel ultimately seeks, then the unapproved portion or portions shall revert into the Net Settlement Amount and the lower award amounts will not reduce or impact the enforceability of this Agreement in any way.

I. Court Approval. Plaintiff will bring a motion before the Court at Plaintiff's expense for an order approving the Settlement, including the Released Claims, Plaintiff's Counsel's attorneys' fees and Litigation costs, and Settlement Administrator costs (the "Motion for Approval"). The Motion for Approval shall also, among other things, request that the Court enter judgment approving the Settlement and this Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions. Plaintiff's Counsel will prepare the Motion for Approval, which shall be subject to review and approval by Defendant. Defense Counsel shall have a minimum of six (6) business days to review the Motion for Approval and all supporting documents in a finalized form substantially ready to be filed before Plaintiff's Counsel files the Motion for Approval with the Court. On the same date on which the Motion for Approval is filed with the Court, Plaintiff's Counsel shall concurrently submit the Motion for Approval and supporting papers to the LWDA in compliance with Labor Code section 2698 *et seq.* This Agreement and the Settlement is contingent upon approval by the Court and the entry of judgment. Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure approval of the Settlement, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining court

approval, and, if necessary, appellate approval, of the Settlement in all respects. Plaintiff and Defendant, as well as Plaintiff's Counsel and Defense Counsel, expressly agree that they will not file any objection to the terms of the Settlement or assist or encourage any person or entity to file any such objection. Plaintiff and Defendant, as well as Plaintiff's Counsel and Defense Counsel, also expressly agree that they will not appeal any judgment entered in conformance with this Agreement. Further, upon completion of all distributions in accordance with the terms of the judgment entered in conformance with the terms of this Agreement, Plaintiff's Counsel shall prepare, file and serve on Defense Counsel an Acknowledgment of Satisfaction of the judgment in full.

As of the Effective Date, Plaintiff will: (i) be bound by the terms and conditions of this Agreement and the releases set forth therein; and (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness and adequacy of the Settlement and the Court's order granting approval.

If the Court should, for any reason, decline to approve the Settlement as set forth in this Agreement, the Parties agree to use their best efforts and to negotiate in good faith in an effort to resolve and/or address the Court's reason(s) for denying approval by amending this Agreement or otherwise. If, after exhausting their best efforts to do so, they are unable to reach agreement and/or to obtain Court approval, this Agreement shall be considered null and void, and all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement Agreement had been neither entered into nor filed with the Court.

J. Jurisdiction. The Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendant denies them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has approved the Settlement and after the Court has ordered the entry of judgment, pursuant to California Code of Civil Procedure section 664.6 the Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with the terms set forth herein.

K. Severability. The Parties agree that if any provision(s) of this Settlement Agreement is determined to be invalid or unenforceable, then to the maximum extent permitted by law, any such provision(s) shall be deemed severed and the remaining provisions of this Agreement shall remain in full force and effect unless the effect of the severing of any such provision(s) adversely and materially affects the overall purpose of the Agreement, to wit: the full, final and complete release and resolution of the Litigation and all claims for civil penalties that were asserted, or could have been asserted, based on the facts stated in the LWDA Notice and/or Plaintiff's State Court Complaint attached hereto as Exhibit B, as well as all claims for civil penalties, arising from, related to or attributable to the facts and/or claims stated in the LWDA Notice and/or Plaintiff's State Court Complaint attached hereto as Exhibit B, whether known or unknown, suspected or unsuspected, by Plaintiff and other Covered Employees and the State of California. In the event of a breach, this Agreement may be specifically enforced.

L. Publicity. Defendant, Plaintiff, and Plaintiff's Counsel agree to limit public comment on this Settlement, the Litigation, and Plaintiff's claims to stating that the matter has been resolved to the satisfaction of the Parties. Neither the Parties nor their counsel will initiate public comment, including but not limited to press inquiries or website, blog, or social media postings and represent that they will not post anything on a website or social media regarding this Settlement, or respond to inquiries from, or otherwise communicate with third parties, including the press, regarding this Settlement, other than to state that this matter has been resolved.

IV. MISCELLANEOUS PROVISIONS

A. The Filing of Plaintiff's State Court Action. As part of this Agreement, Plaintiff will and is required to file a State Court Case in Los Angeles County Superior Court asserting the Released Claims against Defendant within five (5) business days of this Agreement being fully executed by the Parties. However, the Parties agree that Plaintiff's state court action and Complaint will not name any individual Defendants, including Trevor Mayer, who was improperly named in the LWDA notice and cannot be liable as a matter of law, given that Trevor

Mayer never employed Plaintiff or any of the Covered Employees or controlled their wages, hours or working conditions. A copy of Plaintiff's State Court Complaint this Agreement contemplates being filed in connection with initiating Plaintiff's State Court Case is attached hereto as Exhibit B.

B. Stay of the Litigation. Plaintiff and Defendant agree to a stay of this Litigation including Plaintiff's State Court Case and all pending deadlines immediately upon Plaintiff filing the State Court Complaint that is attached to this Agreement as Exhibit B, pending approval of the Settlement by the Court. Defendant's deadline to file a responsive pleading to Plaintiff's State Court Complaint shall be stayed indefinitely pending the Court's ruling on Plaintiff's Motion for Approval. In the event that Plaintiff's Motion for Approval is denied, Defendant shall have thirty (30) calendar days from the date of the Order denying Plaintiff's Motion for Approval to file a responsive pleading to Plaintiff's State Court Complaint. Defendant does not waive any rights or defenses as to any of the claims, causes of action, allegations and/or theories of recovery contained in Plaintiff's State Court Complaint and/or the Litigation by waiting to file a responsive pleading pending the outcome of Plaintiff's Motion for Approval.

C. Interpretation of the Agreement. This Agreement constitutes the entire agreement between Plaintiff and Defendant with respect to the subject matter hereof; notwithstanding the foregoing, Plaintiff has entered or will enter into a settlement agreement resolving his individual claims against Defendant and other related and affiliated persons and entities, which is documented in a separate agreement entitled SEVERANCE AGREEMENT AND RELEASE OF ALL CLAIMS that shall survive this agreement and be separately enforceable, as discussed further below. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its

procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of any arbitration agreements signed by employees of Defendant obligating them to arbitrate any and all claims on an individual (and not on a class, collective, or representative) basis. Plaintiff, on his own behalf and on behalf of the Covered Employees, as well as Defendant participated in the negotiation and drafting of this Agreement and each had available to them the advice and assistance of independent counsel such that the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. As such, in the event that any language in this Agreement is held to be uncertain or ambiguous, any such language shall not be interpreted against any Party based on authorship of such language. Each of the Parties and their counsel have reviewed and revised this Agreement, and the normal rule of construction to the effect of any ambiguities in an agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Each of the Parties represents and warrants that the attorney approving this Agreement as to form on their behalf is the attorney employed to represent them with respect to this Agreement, and all matters covered by and related to it, and they have been fully advised by those attorneys with respect to their rights and obligations as to this Agreement. The Parties declare that they know and understand the contents of this Agreement, and they have executed it voluntarily. Further, this Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Agreement.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Plaintiff and Defendant with respect to

the Settlement of the Litigation. Notwithstanding the foregoing, in connection with the Settlement of the Litigation Plaintiff is required to and shall sign or has already signed a separate individual settlement agreement entitled SEVERANCE AGREEMENT AND RELEASE OF ALL CLAIMS that includes a full general release of all claims he has or may have ever had against Defendant and other related and affiliated persons and entities specified in that agreement, including a full waiver of Civil Code section 1542. This Agreement in no way alters, modifies, supersedes or amends the separate individual settlement agreement Plaintiff shall sign or has already signed in connection with the Settlement of the Litigation and, likewise, nothing in Plaintiff's separate individual settlement agreement shall alter, modify, supersede or amend this Agreement.

D. Further Cooperation. Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

E. Confidentiality of Documents. Plaintiff and Plaintiff's Counsel agree to delete and destroy any and all documents and Electronically Stored Information, and any other forms or items of information received from Defendant in this Litigation, within 15 days of Defendant's payment of the Gross Settlement Amount to the Settlement Administrator. Plaintiff and Plaintiff's Counsel shall provide written verification that all such documents and information have been deleted and/or destroyed within 10 days of the deadline for the deletion and destruction of documents and information.

F. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures sent by fax or as an electronic image are agreed to be binding as if they were originals.

G. Authority. Each individual signing below warrants that they have the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

H. Deadlines Falling on Weekends or Holidays. To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

I. No Prior Assignments. The Parties hereto represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement. Each Party shall defend and indemnify the other Parties from and against an breach of the representation in this section.

J. Attorneys' Fees in Enforcement Actions: Except as otherwise provided in this Settlement Agreement, in the event that any Party to this Settlement Agreement institutes any legal action or other proceeding against any other Party to enforce the provisions of this Settlement Agreement, to interpret this Settlement Agreement, and/or to declare rights and/or obligations under this Settlement Agreement, the successful Party shall be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs incurred in connection with any such action(s), including attorneys' fees and costs on appeal.

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

To Plaintiff as follows:

Messrelian Law, Attorneys at Law
Harout Messrelian (SBN 272020)
500 N. Central Avenue, Suite 840
Glendale, California 91203
hm@messrelianlaw.com

To Defendant as follows:

Lynwood Roads Delivery, LLC

Stradling Yocca Carlson & Rauth, A Professional Corporation
Karla J. Kraft (SBN 205530)
John M. Wicker (SBN 292023)
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Kkraft@stradlinglaw.com
Jwicker@stradlinglaw.com

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

M. Modification: This Settlement Agreement may not be changed, altered, or modified, except in a writing signed by the Parties hereto which expresses, by its terms, an intention to modify this Agreement, and which is approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

N. No Unintended Waivers. No waiver by any Party of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or any subsequent breach of the same or any other provision of this Agreement.

O. No Tax Advice. Defendant does not intend anything contained in this Agreement to constitute legal advice regarding the taxability of any amount paid hereunder, and Plaintiff and the Covered Employees agree that they are not relying upon Defendant, the Released Persons, or any of them, for tax advice. The tax issues for each Covered Employee may be unique, and each Covered Employee is advised to obtain tax advice from their own tax advisor with respect to any payment made pursuant to this Agreement.

P. Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience or reference only and do not constitute a part of this Agreement.

Q. Admissibility. The Parties hereby agree that this Agreement is admissible or subject to disclosure and waive any confidentiality protections for this Agreement under California Evidence Code section 1123.

R. Successors: This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, executors, personal representatives, trustees, executors, administrators, successors and assigns.

THE ABOVE TERMS AND CONDITIONS ARE HEREBY VOLUNTARILY AGREED TO BY THE UNDERSIGNED PARTIES.

Date: Oct 24, 2021


Plaintiff Michael Nevarez, on behalf of
himself, the Covered Employees and the State
of California

Date: October 27th, 2021


Defendant Lynwood Roads Delivery, LEC
By: Joey Brown, COO

Exhibit A



MESSRELAN LAW
ATTORNEYS AT LAW

300 N. Central Avenue, Suite 250
Folsom, California 95630
Tel: (916) 413-4432
Fax: (916) 413-4433

VIA ELECTRONIC FILING

November 19, 2020

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

LYNWOOD ROADS DELIVERY LLC
c/o CSC – LAWYERS INCORPORATING SERVICE
2710 GATEWAY OAKS DR., SUITE 150N
SACRAMENTO, CA 95833

LYNWOOD ROADS DELIVERY LLC
TREVOR MAYER
1437 4th STREET, SUITE 200
SANTA MONICA, CA 90405

MICHAEL NEVAREZ v. LYNWOOD ROADS DELIVERY LLC; TREVOR MAYER

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Michael Nevarez (hereinafter “Mr. Nevarez” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees (“aggrieved employees”) who worked for LYNWOOD ROADS DELIVERY LLC and TREVOR MAYER (hereinafter collectively referred to as “LYNWOOD ROADS”) during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. TREVOR MAYER is being included in this PAGA notice pursuant to Labor Code Section 558.1 since Mr. Mayer is an officer, director, or managing agent of LYNWOOD ROADS and controlled the hours, wages, and working conditions of the employees, including our client.

Mr. Nevarez started working for LYNWOOD ROADS on or around October 2020. His employment ended on or around November 7, 2020. Mr. Nevarez was hired as a local delivery driver and was classified as a non-exempt, hourly employee. Mr. Nevarez’s job duties included driving his own vehicle to make deliveries of cannabis products and to collect money for the company. Mr. Nevarez worked 5 days per week and his general hours were 2pm to 11pm. Mr.



MESSRELAN LAW
ATTORNEYS AT LAW

500 N. Center Avenue, Suite 840
Glendale, California 91205
Tel: 818-241-1021
Fax: 818-241-5712

Nevarez was earning \$15.50/hour. Mr. Nevarez would clock-in and clock-out for work on the "Humanity" application, which had been downloaded on his personal cell phone.

It is our position that LYNWOOD ROADS has violated the following Labor Code Sections against Mr. Nevarez and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for LYNWOOD ROADS during the relevant PAGA period.

LYNWOOD ROADS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. Mr. Nevarez and other similarly situated aggrieved employees would often complete work tasks during their meal periods and, as such, would not be compensated for all hours worked. LYNWOOD ROADS and management unequivocally knew of the "off the clock" work but failed to compensate Mr. Nevarez and other similarly situated aggrieved employees for all hours worked, which translates into a minimum wage violation. There is also an issue with rounding as employee hours are rounded down and to the detriment of the employees, which results in the employees being paid for less hours than they actually worked, resulting in yet another minimum wage violation.

Due to the above "off the clock" violations, LYNWOOD ROADS also violated Labor Code § 510 because it failed to pay our client and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Nevarez's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, LYNWOOD ROADS did not compensate its hourly, non-exempt employees with the correct amount of overtime. In addition, to the extent LYNWOOD ROADS gives its employees non-discretionary bonuses, it does not factor that bonus in calculating the employees' regular rate of pay for the purposes of calculating the correct amount of overtime compensation.

LYNWOOD ROADS also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4 or 9 because it failed to provide our client and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. LYNWOOD ROADS did not completely relieve our client and others of all duty during said rest periods. LYNWOOD ROADS did not pay to our client and others one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Mr. Nevarez to take rest breaks. The concept of rest breaks was never discussed with employees nor was it ever implemented as it was not company policy. Unlike other cannabis delivery companies, LYNWOOD ROADS did not have a phone application to give alerts to drivers to take their statutory rest periods. Moreover, it would not have been possible for employees such as Mr. Nevarez to take such rest breaks due to a major understaffing problem at LYNWOOD ROADS with the drivers and the fact that the deliveries had to be completed in a timely fashion. As such, the culture at LYNWOOD ROADS did not lend itself to the employees receiving statutory rest breaks wherein they were relieved of all work duties. The environment at

LYNWOOD ROADS was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

LYNWOOD ROADS violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order no. 4 or 9 because it failed to provide hourly, non-exempt employees, including Mr. Nevarez and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. LYNWOOD ROADS did not completely relieve Mr. Nevarez and other employees of all duty during said meal periods. LYNWOOD ROADS did not pay to Mr. Nevarez and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees would often not be able to receive their meal periods before the 5th hour worked due to understaffing and the nature of their work in constantly being on the road to complete deliveries. There were many occasions during which Mr. Nevarez simply did not eat during his shift at all. Furthermore, to the extent that Mr. Nevarez and others were even able to eat, Mr. Nevarez and others would eat and work at the same time and while driving. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the company culture and was not enforced by LYNWOOD ROADS. Furthermore, any argument by LYNWOOD ROADS that the employees signed an "On Duty Meal Period Agreement" would not hold water since the nature of their job did not prevent them from being relieved of all work duties. Additionally, and unlike other cannabis delivery companies, LYNWOOD ROADS did not have a phone application to give alerts to drivers to take their statutory meal periods. Consequently, it was the normal practice and custom of LYNWOOD ROADS not to authorize, permit, and enforce timely statutory meal periods.

Furthermore, during the relevant time period and based on the above, LYNWOOD ROADS failed to pay Mr. Nevarez and others all wages due to them within any time period specified by California Labor Code section 204.

LYNWOOD ROADS also violated Labor Code Sections 351 and 353 by taking customer tips away from employees such as Mr. Nevarez and for also NOT providing the tips to employees such as Mr. Nevarez in a timely fashion and when they are earned. In general, cash tips are payable to the employee immediately when they are received, without interference from the employer. In this specific scenario, LYNWOOD ROADS forces employees such as Mr. Nevarez to provide the cash tips to the employer who then later may or may not provide that tip back to the employee in their regular weekly paycheck.

LYNWOOD ROADS was also in violation of California Labor Code section 226(a), by failing to include pertinent information on the wage statements, including but not limited to, the full and correct name of the legal employer along with the employer's correct legal address, all hours worked (including "off the clock" hours and overtime), all applicable hourly rates in effect, the correct identifying information for each employee, gross wages earned, net wages earned, premium pay for the missed meal and rest breaks, the correct start and end of the pay period, all deductions, and business expense reimbursement, among others. In fact, LYNWOOD ROADS had erroneously placed an hourly rate entry for the "Tips-Cash" category, which is inaccurate and



395 S. Central Avenue, Suite 100
Trenton, NJ 08611-3700
Tel: 609-391-1111
Fax: 609-391-1112

wrong. As such, LYNWOOD ROADS did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, LYNWOOD ROADS also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Nevarez and others pursuant to California Labor Code sections 1174(d).

LYNWOOD ROADS also violated Labor Code § 203 because it willfully failed to pay Mr. Nevarez and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement.

Also, during the relevant time period, Mr. Nevarez and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by LYNWOOD ROADS. These costs include, but are not limited to, the use of personal cell phones for work purposes as well as mileage reimbursement. Although Mr. Nevarez and others were given company “Android” phones, those phones would often not function properly. As such, Mr. Nevarez and others were told to download applications on their personal cell phones and to use their personal cell phones for work purposes, such as for navigation or to clock-in and clock/out. In addition, Mr. Nevarez and others were not reimbursed at the correct IRS mileage reimbursement rate of 57.5 cents per mile since LYNWOOD ROADS only compensated Mr. Nevarez and others 45 cents per mile. In addition, LYNWOOD ROADS did not consider the wear and tear on Mr. Nevarez and others’ vehicles and did reimburse Mr. Nevarez and others for that. Accordingly, LYNWOOD ROADS was in violation of California Labor Code sections 2800 and 2802.

Moreover, LYNWOOD ROADS failed to provide sick pay pursuant to Labor Code section 246 and also failed to provide Worker’s Compensation coverage for Mr. Nevarez and other aggrieved employees in violation of Labor Code Section 3700.5.

Furthermore, we believe your company has also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Nevarez also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.



2000 Central Avenue, Suite 200
Alhambra, California 91801
Tel: (626) 421-4721
Fax: (626) 421-4722

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by LYNWOOD ROADS.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,



Harout Messrelian, Esq.

Exhibit B

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian, Esq., SB# 272020

3 500 N. Central Ave. Suite 840

4 Glendale, California 91203

5 Telephone: (818) 484-6531

6 Facsimile: (818) 956-1983

7 Email: hm@messrelianlaw.com

8 Attorneys for Plaintiff MICHAEL NEVAREZ

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

10 **FOR THE COUNTY OF LOS ANGELES**

11 MICHAEL NEVAREZ,

12 Plaintiff,

13 vs.

14 LYNWOOD ROADS DELIVERY, LLC; and
15 DOES 1 to 25, inclusive,

16 Defendants.

CASE NO.

COMPLAINT FOR DAMAGES FOR:

- 1) PRIVATE ATTORNEYS
GENERAL ACT ("PAGA")
PENALTIES FOR (1) FAILURE
TO PAY ALL WAGES FOR ALL
HOURS WORKED,
INCLUDING, BUT NOT
LIMITED TO, FOR OFF-THE-
CLOCK WORK; (2) FAILURE
TO PAY ALL OVERTIME
AND/OR DOUBLE TIME
WAGES; (3) FAILURE TO PAY
OVERTIME WAGES AT THE
CORRECT REGULAR RATES
OF PAY; (4) FAILURE TO PAY
MINIMUM WAGES; (5)
FAILURE TO PROVIDE
COMPLIANT REST PERIODS
AND TO PAY RELATED REST
PERIOD PREMIUMS; (6)
FAILURE TO PROVIDE
COMPLIANT MEAL PERIODS
AND TO PAY RELATED MEAL
PERIOD PREMIUMS; (7)
FAILURE TO TIMELY PAY
ALL WAGES DURING

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EMPLOYMENT; (8) FAILURE TO TIMELY PAY ALL WAGES AT TERMINATION, AND FAILURE TO PAY APPLICABLE WAITING TIME PENALTIES; (9) UNLAWFUL TAKING, CONFISCATION, CONVERSION, COLLECTION, INTERFERENCE WITH, RECEIVING AND/OR HANDLING OF GRATUITIES (TIPS) LEFT BY PATRONS, AND FAILURE TO RETURN, PAY AND/OR PROVIDE ALL GRATUITIES IN A TIMELY FASHION, AND FAILURE TO KEEP ACCURATE RECORDS OF ALL GRATUITIES RECEIVED; (10) FAILURE TO PROVIDE COMPLIANT, COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS; (11) FAILURE TO MAINTAIN ACCURATE AND COMPLETE TIMEKEEPING AND PAYROLL RECORDS; (12) FAILURE TO REIMBURSE ALL NECESSARY BUSINESS EXPENSES, LOSSES AND/OR COSTS; (13) FAILURE TO PROVIDE SICK PAY AND TO PROVIDE NOTICE OF SICK PAY RIGHTS; (14) FAILURE TO PROVIDE WORKERS' COMPENSATION INSURANCE COVERAGE; (15) VIOLATIONS OF LABOR CODE SECTION 558; (16) UNLAWFUL TIME ROUNDING POLICIES AND PROCEDURES; (17) UNFAIR BUSINESS PRACTICES (BUSINESS & PROFESSIONS CODE SECTION 17200)
2) VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

1 COMES NOW Plaintiff, MICHAEL NEVAREZ (hereinafter "Plaintiff"), as an
2 aggrieved employee and on behalf of all other non-party aggrieved employees and the State of
3 California, and alleges as follows:

4 **PARTIES, JURISDICTION, VENUE**

5 1. Jurisdiction and Venue are proper in this Court and this action is properly filed
6 in the County of Los Angeles in this judicial district because Defendants LYNWOOD ROADS
7 DELIVERY, LLC and DOES 1 to 25, inclusive, do business in the County of Los Angeles and
8 because Defendants' obligations and liabilities arise therein, and because the work that was
9 performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover,
10 Plaintiff's damages sought herein exceed \$25,000.

11 2. Plaintiff is a male resident of the County of Los Angeles, State of California.

12 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
13 LYNWOOD ROADS DELIVERY, LLC (hereinafter "LYNWOOD ROADS") is and was a
14 Delaware Limited Liability Company, doing business in Los Angeles County, California, and
15 which employed Plaintiff. LYNWOOD ROADS DELIVERY, LLC and DOES 1 to 25 are
16 collectively referred to herein as "LYNWOOD ROADS" or "Defendant(s)".

17 4. Plaintiff is ignorant of the true names and capacities, whether individual,
18 corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so
19 Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the
20 DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner
21 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
22 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
23 and capacities of these fictitiously named defendants.

24 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the
25 basis of that information and belief, alleges that at all times herein mentioned, each of the
26 remaining codefendants, in doing the things hereinafter alleged, were acting within the course,
27 scope, and under the authority of their agency, employment, or representative capacity, with
28 the consent of his/her codefendants.

6. This is a law enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and all other current and former non-exempt employees of LYNWOOD ROADS who were employed by LYNWOOD ROADS in California at any time between one year before Plaintiff’s submission of the notice to the California Labor and Workforce Development Agency (the “LWDA”) on November 19, 2020 in advance of Plaintiff’s filing of this complaint (in addition to all days the period was stayed or tolled) until judgment. As such, the term “RELEVANT PAGA PERIOD” as used herein shall refer to the time period of November 19, 2019 through the date of Judgment in this matter.

GENERAL ALLEGATIONS

7. Plaintiff started working for LYNWOOD ROADS on or around October 2020. His employment ended on or around November 7, 2020. Plaintiff was hired as a local delivery driver and was classified as a non-exempt, hourly employee. Plaintiff's job duties included driving his own vehicle to make deliveries of cannabis products and to collect money for the company. Plaintiff worked 5 days per week and his general hours were 2 p.m. to 11 p.m.

8. Plaintiff was earning \$15.50/hour. Plaintiff would clock-in and clock-out for work on the “Humanity” application, which had been downloaded on his personal cell phone.

9. It is Plaintiff's position that Plaintiff has claims against LYNWOOD ROADS on behalf of Plaintiff himself, the State of California, and all "AGGRIEVED EMPLOYEES", defined as all current and former non-exempt employees of LYNWOOD ROADS (including Plaintiff) who were employed by LYNWOOD ROADS in California at any time during the RELEVANT PAGA PERIOD, for the following violations: (1) failure to pay all wages for all hours worked, including, but not limited to, for off-the-clock work; (2) failure to pay all overtime and/or double time wages; (3) failure to pay overtime wages at the correct regular rates of pay; (4) failure to pay minimum wages; (5) failure to provide compliant rest periods and to pay related rest period premiums of one additional hour of pay at each AGGRIEVED EMPLOYEE'S regular rate of compensation for each work day that one or more rest periods

1 was not provided; (6) failure to provide compliant meal periods and to pay related meal period
2 premiums of one additional hour of pay at each AGGRIEVED EMPLOYEE'S regular rate of
3 compensation for each work day that one or more meal periods was not provided; (7) failure to
4 timely pay all wages during employment; (8) failure to timely pay all wages at termination, and
5 failure to pay applicable waiting time penalties; (9) unlawful taking, confiscation, conversion,
6 collection, interference with, receiving and/or handling of gratuities (tips) left by patrons, and
7 failure to return, pay and/or provide all gratuities in a timely fashion, and failure to keep
8 accurate records of all gratuities received; (10) failure to provide compliant, complete and
9 accurate itemized wage statements; (11) failure to maintain accurate and complete timekeeping
10 and payroll records; (12) failure to reimburse all necessary business expenses, losses and/or
11 costs; (13) failure to provide sick pay and to provide notice of sick pay rights; (14) failure to
12 provide Workers' Compensation insurance coverage; (15) violations of Labor Code section
13 558; (16) unlawful time rounding policies and procedures; (17) unfair business practices
14 (Business & Professions code section 17200).

15 10. LYNWOOD ROADS violated Labor Code §§ 1194, 1194.2, 1197, 1182.12 and
16 1197.1 because it failed to pay Plaintiff and other AGGRIEVED EMPLOYEES for all hours
17 worked, including the statutory minimum wage for all hours worked and for "off the clock"
18 work. Plaintiff and other AGGRIEVED EMPLOYEES would often complete work tasks
19 while not clocked into LYNWOOD ROADS' timekeeping system, including during their meal
20 periods and, as such, would not be compensated for all hours worked. LYNWOOD ROADS
21 and management unequivocally knew of the "off the clock" work but failed to compensate
22 Plaintiff and other AGGRIEVED EMPLOYEES for all hours worked, which translates into a
23 minimum wage violation. There is also an issue with rounding as AGGRIEVED
24 EMPLOYEES' hours are rounded down and to their detriment, which results in the
25 AGGRIEVED EMPLOYEES being paid for less hours than they actually worked, resulting in
26 yet another minimum wage violation.

27 11. Due to the above "off the clock" violations, LYNWOOD ROADS also violated
28 Labor Code §510 because it failed to pay Plaintiff and other AGGRIEVED EMPLOYEES

1 overtime Compensation when legally required, even though they worked more than 8 hours per
2 day, 12 hours per day, and/or 40 hours per week throughout their employment, or worked 8 or
3 12 hours or more on the seventh consecutive day in a workweek. Plaintiff's and other
4 AGGRIEVED EMPLOYEES' actual work hours entitled them to overtime compensation.
5 however, LYNWOOD ROADS did not compensate its hourly, non-exempt employees with the
6 correct amount of overtime, including one-and-a-half times their regular rate of pay for
7 working between 8 and 12 hours per day, up to 8 hours on the seventh consecutive day in a
8 workweek or over 40 hours in a workweek; or two-times their regular rate of pay for working
9 over 12 hours in a day or over 8 hours on the seventh consecutive day in a workweek. In
10 addition, to the extent LYNWOOD ROADS gives its employees non-discretionary bonuses, it
11 does not factor such bonuses in when calculating the AGGRIEVED EMPLOYEES' regular
12 rate of pay for the purposes of calculating the correct amount of overtime compensation.

13 12. LYNWOOD ROADS also violated Labor Code § 226.7 and the appropriate
14 Industrial Welfare Commission Wage Order no. 4 or 9 because it failed to provide Plaintiff and
15 other AGGRIEVED EMPLOYEES with 10-minute rest periods for every four hours of work,
16 or majority portion thereof, throughout their employment. Amongst other issues with
17 providing rest breaks, LYNWOOD ROADS did not completely relieve Plaintiff and other
18 AGGRIEVED EMPLOYEES of all duty during said rest periods. LYNWOOD ROADS did
19 not pay to Plaintiff and other AGGRIEVED EMPLOYEES one additional hour of pay at their
20 regular rate of compensation for each workday that one or more statutory rest periods was not
21 provided. It was not part of the company policy for employees such as Plaintiff to take rest
22 breaks. The concept of rest breaks was never discussed with employees, nor was it ever
23 implemented as it was not company policy. Unlike other cannabis delivery companies,
24 LYNWOOD ROADS did not have a phone application to give alerts to drivers or other
25 AGGRIEVED EMPLOYEES to take their statutory rest periods. Moreover, it would not have
26 been possible for employees such as Plaintiff or other AGGRIEVED EMPLOYEES to take
27 such rest breaks due to a major understaffing problem at LYNWOOD ROADS and the fact that
28 the deliveries had to be completed in a timely fashion. As such, the culture at LYNWOOD

1 ROADS did not lend itself to the employees receiving statutory rest breaks wherein they were
2 relieved of all work duties. The environment at LYNWOOD ROADS was not conducive to
3 receiving statutory rest breaks under California law and timely, statutory rest breaks were not
4 authorized or enforced for Plaintiff or AGGRIEVED EMPLOYEES.

5 13. LYNWOOD ROADS violated Labor Code §§ 512 and 226.7 along with
6 Industrial Welfare Commission Wage Order no. 4 or 9 because it failed to provide hourly, non-
7 exempt employees, including Plaintiff and other AGGRIEVED EMPLOYEES, the requisite
8 timely 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their
9 employment. Amongst other issues, LYNWOOD ROADS did not completely relieve Plaintiff
10 and other AGGRIEVED EMPLOYEES of all duty during said meal periods, and
11 AGGRIEVED EMPLOYEES often worked during their meal periods. LYNWOOD ROADS
12 did not pay to Plaintiff and AGGRIEVED EMPLOYEES one additional hour of pay at their
13 regular rate of compensation for each workday that one or more statutory meal periods was not
14 provided. AGGRIEVED EMPLOYEES would often not be able to receive their meal periods
15 before the 5th hour worked due to understaffing and the nature of their work in constantly
16 being on the road to complete deliveries. There were many occasions during which Plaintiff
17 and other AGGRIEVED EMPLOYEES simply did not eat or take meal periods during their
18 shifts at all. Furthermore, to the extent that Plaintiff and other AGGRIEVED EMPLOYEES
19 were even able to eat, Plaintiff and other AGGRIEVED EMPLOYEES would eat and work at
20 the same time, including while driving. Like the rest breaks, receiving a thirty-minute
21 uninterrupted and timely meal break was not part of the company culture and was not enforced
22 by LYNWOOD ROADS. Furthermore, any argument by LYNWOOD ROADS that the
23 AGGRIEVED EMPLOYEES signed an "On Duty Meal Period Agreement" would not hold
24 water since the nature of their jobs did not prevent them from being relieved of all work duties.
25 Additionally, and unlike other cannabis delivery companies, LYNWOOD ROADS did not
26 have a phone application to give alerts to drivers or AGGRIEVED EMPLOYEES to take their
27 statutory meal periods. Consequently, it was the normal practice and custom of LYNWOOD
28 ROADS not to authorize, permit, and enforce timely statutory meal periods.

1 14. Furthermore, during the RELEVANT PAGA PERIOD LYNWOOD ROADS
2 failed to pay Plaintiff and other AGGRIEVED EMPLOYEES all wages due to them within the
3 time periods specified by California law, including California Labor Code section 204,
4 including, but not limited to, based on the above alleged conduct by LYNWOOD ROADS.

5 15. LYNWOOD ROADS also violated Labor Code Sections 351 and 353 by taking
6 customer tips away from AGGRIEVED EMPLOYEES such as Plaintiff and for also NOT
7 providing and/or paying the tips to AGGRIEVED EMPLOYEES such as Plaintiff in a timely
8 fashion and when they are earned. In general, tips are payable to the employee immediately
9 when they are received, without interference from the employer. In this specific scenario,
10 LYNWOOD ROADS forces AGGRIEVED EMPLOYEES such as Plaintiff to provide their
11 tips to the employer who then later may or may not provide that tip back to the employee in
12 their regular weekly paycheck. LYNWOOD ROADS also failed to keep adequate and
13 compliant records of all tips received by AGGRIEVED EMPLOYEES. Based on the
14 foregoing, LYNWOOD ROADS engaged in the unlawful taking, confiscation, conversion,
15 collection, interference with, receiving and/or handling of gratuities (tips) left by patrons, in
16 violation of the California Labor Code.

17 16. LYNWOOD ROADS was also in violation of California Labor Code section
18 226(a), by failing to include pertinent information on the wage statements, including but not
19 limited to, the full and correct name of the legal employer along with the employer's correct
20 legal address, all hours worked (including "off the clock" hours and overtime), all applicable
21 hourly rates in effect, the correct identifying information for each employee, gross wages
22 earned, net wages earned, premium pay for the missed meal and rest breaks, the correct start
23 and end of the pay period, all deductions, and business expense reimbursement, among others.
24 In fact, LYNWOOD ROADS had erroneously placed an hourly rate entry for the "Tips-Cash"
25 category, which is inaccurate and wrong. As such, LYNWOOD ROADS did not provide
26 Plaintiff and other AGGRIEVED EMPLOYEES with complete, accurate itemized wage
27 statements. During the RELEVANT PAGA PERIOD, LYNWOOD ROADS also failed to
28 keep and maintain accurate and complete timekeeping and payroll records, including, but not

1 limited to, records showing the actual hours worked per day and the wages paid to Plaintiff and
2 other AGGRIEVED EMPLOYEES pursuant to California Labor Code sections 1174(d).

3 17. LYNWOOD ROADS also violated Labor Code §§ 201 - 203 because it
4 willfully failed to pay Plaintiff and other AGGRIEVED EMPLOYEES earned and due wages
5 upon separation of employment, either immediately upon involuntary termination, or within 72
6 hours of resignation. These earned but unpaid wages include compensation for all hours
7 worked, including minimum wages, overtime compensation, premium pay for missed meal and
8 rest breaks, and business expense reimbursement. LYNWOOD ROADS also failed to pay
9 applicable waiting time penalties.

10 18. Also, during the RELEVANT PAGA PERIOD, Plaintiff and other
11 AGGRIEVED EMPLOYEES incurred necessary, business-related expenses and costs that
12 were not reimbursed by LYNWOOD ROADS. These costs include, but are not limited to, the
13 use of personal cell phones for work purposes as well as mileage reimbursement and home
14 internet expenses. Although Plaintiff and other AGGRIEVED EMPLOYEES were given
15 company "Android" phones, those phones would often not function properly. As such,
16 Plaintiff and other AGGRIEVED EMPLOYEES were told to download applications on their
17 personal cell phones and to use their personal cell phones for work purposes, such as for
18 navigation or to clock-in and clock/out. In addition, Plaintiff and other AGGRIEVED
19 EMPLOYEES were not reimbursed at the correct IRS mileage reimbursement rate of 57.5
20 cents per mile since LYNWOOD ROADS only compensated Plaintiff and other AGGRIEVED
21 EMPLOYEES 45 cents per mile. In addition, LYNWOOD ROADS did not consider the wear
22 and tear on Plaintiff and other AGGRIEVED EMPLOYEES' vehicles and did not reimburse
23 Plaintiff and other AGGRIEVED EMPLOYEES for that. That is, LYNWOOD ROADS'
24 mileage reimbursement rate was insufficient to compensate AGGRIEVED EMPLOYEES for
25 all costs incurred in operating their vehicles in connection with their work for LYNWOOD
26 ROADS. LYNWOOD ROADS also did not reimburse AGGRIEVED EMPLOYEES for all
27 mileage incurred in connection with their work. Accordingly, LYNWOOD ROADS was in
28 violation of California Labor Code sections 2800 and 2802.

1 19. Moreover, LYNWOOD ROADS failed to provide sick pay and to provide
2 notice of sick pay rights to Plaintiff and other AGGRIEVED EMPLOYEES pursuant to Labor
3 Code section 246.

4 20. LYNWOOD ROADS also failed to provide Worker's Compensation coverage
5 for Plaintiff and other AGGRIEVED EMPLOYEES in violation of Labor Code Section
6 3700.5.

7 **FIRST CAUSE OF ACTION**

8 **PRIVATE ATTORNEYS GENERAL ACT**

9 **Individual and Representative Claim for PAGA penalties under California Labor Code**
10 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512,**
11 **558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3700.5 and**
12 **the applicable Industrial Welfare Commission Wage Order Nos. 4-2001 or 9-2001**

13 **(Plaintiff Against All Named Defendants and all DOE Defendants)**

14 21. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.

16 22. Pursuant to law, on November 19, 2020 Plaintiff provided the required written
17 notice to the LWDA and Defendants of the specific violations of the California Labor Code
18 that Plaintiff alleges LYNWOOD ROADS and DOE defendants have violated and continue to
19 violate. A copy of Plaintiff's written notice to the LWDA is attached hereto as Exhibit A.

20 23. Pursuant to California Labor code section 2699.3, no response was received
21 from the LWDA within 65 days of the postmark date of the written notice provided by Plaintiff
22 to the LWDA discussed immediately above.

23 24. Plaintiff therefore has exhausted all administrative remedies required of him
24 under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
25 this cause of action and pursue penalties in a representative action on behalf of himself, the
26 State of California and all AGGRIEVED EMPLOYEES for LYNWOOD ROADS' and doe
27 defendants' violations of the Labor Code and other provisions of California law, as alleged
28 herein above.

1 25. Pursuant to California Labor Code section 2699, any provision of the Labor
2 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
3 departments, divisions, commissions, boards, agencies, or employees for violation of the
4 California Labor Code may, as an alternative, be recovered through a civil action brought by an
5 "aggrieved employee" on behalf of himself or herself and other current or former employees
6 pursuant to the procedures specified in California Labor Code section 2699.3.

7 26. Plaintiff is an "aggrieved employee" pursuant to the PAGA because Plaintiff
8 was employed by the alleged violator and had one or more of the alleged violations committed
9 against him, and therefore is properly suited to represent the interests of other current and
10 former non-exempt employees who were employed by LYNWOOD ROADS in the State of
11 California at any and all locations during the RELEVANT PAGA PERIOD.

12 27. Based on the acts alleged above, Plaintiff, on behalf of himself, the State of
13 California and other AGGRIEVED EMPLOYEES, seeks penalties under California Labor
14 Code sections 2698 and 2699 because of LYNWOOD ROADS' violations of numerous
15 provisions of the California Labor Code and Wage Orders as alleged in this Complaint
16 including, but not limited to, violations of California Labor Code sections 201-204, 204b, 210,
17 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
18 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 3700.5, and Wage Orders No. 4 and 9 of the
19 Industrial Welfare Commission.

20 28. Plaintiff therefore has exhausted all administrative remedies required of him
21 under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
22 this cause of action and pursue penalties in a representative action for LYNWOOD ROADS'
23 alleged violations of the Labor Code and other provisions of California law, as alleged herein
24 above.

25 29. California Labor Code section 2699 et seq. imposes penalties upon culpable
26 defendants for violating the Labor Code.

27 30. California Labor Code section 558 establishes a civil penalty as follows: Any
28 employer or other person action on behalf of an employer who violates, or causes to be

1 violated, a section of this chapter or any provision regulating hours and days of work in any
2 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
3 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
4 dollars (\$50) for each underpaid employee for each pay period for which the employee was
5 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
6 employee for each pay period for which the employee was underpaid ...; California Labor
7 Code Section 558.1 also extends liability to a "person acting on behalf of an employer", who is
8 an owner, director, officer, or managing agent of the employer.

9 31. Plaintiff seeks penalties for LYNWOOD ROADS' misconduct as alleged herein
10 as permitted by law.

11 32. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,
12 for the following:

13 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
14 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2,
15 1197, 1197.1, 1198, 2800, 2802, and 3700.5 via 2698 and 2699, and any other Labor Code
16 sections and/or Wage Orders (including no. 4 or 9) violated based on the facts alleged in this
17 Complaint.

18 33. Plaintiff also seeks penalties for violations of the Wage Orders of the Industrial
19 Welfare Commission, including, but not limited to, Wage Orders Nos. 4 and 9.

20 34. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover
21 attorney's fees, costs, and civil penalties on behalf of Plaintiff and other AGGRIEVED
22 EMPLOYEES as alleged herein in an amount to be shown according to proof at trial and
23 within the jurisdictional limits of this Court.

24 **SECOND CAUSE OF ACTION**

25 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

26 **(California Business and Professions Code Section 17200)**

27 **(Plaintiff against All Named Defendants and all DOE defendants)**

1 35. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 34, inclusive, of this Complaint as though fully set forth herein.

3 36. By virtue of violating the foregoing statutes, regulations, and laws alleged in
4 this Complaint, the acts of LYNWOOD ROADS constitute unfair and unlawful business
5 practices in violation of California Business and Professions Code Section 17200, *et seq.*

6 37. LYNWOOD ROADS' violations of California labor laws and the Labor Code
7 constitute a business practice because they were committed repeatedly over a significant period
8 of time in a systematic manner that was detrimental to Plaintiff, other AGGRIEVED
9 EMPLOYEES and the general public. Plaintiff seeks to enforce important rights affecting the
10 public interest.

11 38. For the four years preceding the filing of this action, Plaintiff and AGGRIEVED
12 EMPLOYEES have suffered damages and request damages and/or restitution of all monies and
13 profits to be disgorged from LYNWOOD ROADS in an amount according to proof at time of
14 trial, but in excess of the jurisdiction of this Court.

15 WHEREFORE, Plaintiff prays for Judgment against Defendant(s) and each of them, as
16 follows:

- 17 1. For the imposition of civil penalties including, but not limited to, pursuant to all
18 applicable sections of the California Labor Code, California Wage Orders and
19 other provisions of California law based on the allegations herein;
- 20 2. For maximum civil penalties available under Labor Code Section 2699 in a
21 manner and amount authorized by that statute, as described more particularly in
22 the Complaint and representative PAGA claims;
- 23 3. That the Court declare, adjudge and decree that Defendant(s) have violated the
24 Labor Code sections and other provisions of California law alleged to have been
25 violated herein;
- 26 4. For prejudgment and post-judgment interest as provided by law;
- 27 5. For restitution of unpaid wages;
- 28 6. For all available relief under Business & Professions Code section 17200;

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- 7. For all costs and disbursements incurred in this suit;
- 8. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698 et seq., and/or other applicable laws; and
- 9. For such other and further relief as this Court may deem proper.

DATED: September 20, 2021

MESSRELIAN LAW INC.

By _____
Harout Messrelian, Esq.
Attorneys for Plaintiff Michael Nevarez

Exhibit C

NOTICE OF SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT LAWSUIT

Michael Nevarez v. Lynwood Roads Delivery, LLC, et al.
Los Angeles County Superior Court, Case No. [INSERT]

[INSERT DATE OF MAILING]

This Notice relates to the settlement of a lawsuit brought pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA"). On [INSERT], 2021, Plaintiff Michael Nevarez ("Plaintiff") filed the current lawsuit in the Los Angeles County Superior Court (the "Court") on behalf of himself, all other allegedly aggrieved employees and the State of California against defendant Lynwood Roads Delivery, LLC ("Defendant"), which is titled *Michael Nevarez v. Lynwood Roads Delivery, LLC, et al.*, Case No. [INSERT].

Plaintiff brought the lawsuit as a representative action under PAGA on behalf of the State of California, himself, and all other allegedly aggrieved employees. Plaintiff's lawsuit asserts Defendant allegedly committed the following violations of California law: (1) failure to pay all wages for all hours worked, including, but not limited to, for off-the-clock work; (2) failure to pay all overtime and/or double time wages; (3) failure to pay overtime wages at the correct regular rates of pay; (4) failure to pay minimum wages; (5) failure to provide compliant rest periods and to pay related rest period premiums of one additional hour of pay at each employee's regular rate of compensation; (6) failure to provide compliant meal periods and to pay related meal period premiums of one additional hour of pay at each employee's regular rate of compensation; (7) failure to timely pay all wages during employment; (8) failure to timely pay all wages at termination, and failure to pay applicable waiting time penalties; (9) unlawful taking, confiscation, conversion, collection, interference with, receiving and/or handling of gratuities (tips) left by patrons, and failure to return, pay and/or provide all gratuities in a timely fashion, and failure to keep accurate records of all gratuities received; (10) failure to provide compliant, complete and accurate itemized wage statements; (11) failure to maintain accurate and complete timekeeping and payroll records; (12) failure to reimburse all necessary business expenses, losses and/or costs; (13) failure to provide sick pay and to provide notice of sick pay rights; (14) failure to provide Workers' Compensation insurance coverage; (15) violations of Labor Code section 558; (16) unlawful time rounding policies and procedures; and (17) unfair business practices (violation of Business & Professions code section 17200). By law, a PAGA action is an action for civil penalties in which the State of California receives seventy-five percent of any net settlement, and twenty-five percent of the net settlement is distributed to the aggrieved employees.

Defendant vigorously denies and disputes all of Plaintiff's alleged claims and allegations, contends that it has acted in compliance with all legal requirements, and contends that no penalties are due to Plaintiff, other allegedly aggrieved employees or the State of California.

The Court has made no determination on the merits of Plaintiff's claims, and there has been no finding of any wrongdoing by Defendant, but the parties have decided to resolve the case through settlement, with the approval of the Court. The allegedly aggrieved employees who have released their claims for penalties through this settlement, and who are therefore entitled to receive a settlement payment, consist of all current and former non-exempt employees of Defendant (including, but not limited to, Plaintiff), who were employed by Defendant in California at any time during the period of November 19, 2019 through [INSERT THE DATE THE COURT GRANTS APPROVAL OF THE SETTLEMENT]. You have received this notice because Defendant's records indicate that you are one of the allegedly aggrieved employees covered by this settlement.

The enclosed check represents your portion of the net settlement payment, which is a pro-rata distribution based on the number of pay periods you worked for Defendant during the period of November 19, 2019 through [INSERT THE DATE THE COURT GRANTS APPROVAL OF THE SETTLEMENT]. You may deposit or cash the check without any further obligation on your part and there is no need for you to contact the settlement administrator, the parties, or the Court.

If you have any questions, please contact the settlement administrator, Phoenix Settlement Administrators, at [INSERT PHONE NUMBER AND ADDRESS].

To the extent there are any conflicts between this notice and the terms of the Joint Stipulation of Settlement Agreement and Release executed by Plaintiff and Defendant, the terms of the Joint Stipulation of Settlement Agreement and Release will control and govern.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE.