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6 individually and on behalf of similarly situated employees

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

10
11 JUAN RUIZ, individually and on behalf of all
other similarly situated employees,

12 Plaintiff,

13 vs.

14
15 CTE CAL, INC., a California Corporation; and
16 DOES 1 to 100, inclusive,

17 Defendants.

Case No. 34-2020-00289168

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: February 16, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: November 18, 2020

FAC Filed: March 29, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on February 16, 2022, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 54 of the above-entitled Court, Plaintiff Juan Ruiz, individually and
4 on behalf of all other similarly situated individuals, hereby move for entry of an Order for the following:

- 5 1. Certifying the proposed class herein for purposes of settlement;
- 6 2. Appointing Plaintiff Juan Ruiz as class representative for purposes of settlement;
- 7 3. Appointing the Shimoda Law Corp. as Class Counsel for purposes of settlement;
- 8 4. Approving the proposed class action settlement, in the amount of \$450,000, which is
9 incorporated herein by reference;
- 10 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
11 \$157,500 (35% of the Gross Settlement Amount);
- 12 6. Approving the application for payment to class counsel of reasonable costs in the amount of
13 \$8,397.43;
- 14 7. Approving the Class Representative Enhancement Payment of \$15,000 to Plaintiff Juan Ruiz;
- 15 8. Approving the appointment of Simpluris, Inc. as the Claims Administrator and for payment
16 to Simpluris, Inc. for administering said class action settlement in an amount not to exceed
17 \$10,000;
- 18 9. Approving the settlement of claims under the Private Attorneys General Act for the total
19 amount of \$5,000, 75% of which will be paid to the Labor and Workforce Development
20 Agency and 25% of which will be paid to PAGA Claimants;
- 21 10. Approving as to form and content the Notice of Proposed Class Action Settlement, and
22 Hearing Date for Final Court Approval of Settlement ("Notice of Settlement");
- 23 11. Approving the procedure used to notify the class and determining that the notification
24 procedure and process complied with class members' due process rights;
- 25 12. Directing that any residue from settlement checks that were not cashed by the check cashing
26 deadline be donated 50/50 to Capital Pro Bono, Inc. and the Center For Workers' Rights
27 Employment Law Clinic under the doctrine of *cy pres*;
- 28

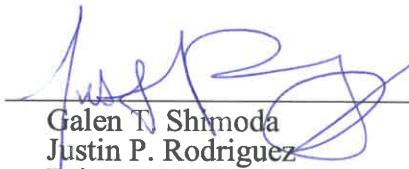
1 13. Approving and adopting the Proposed Order and its implementation schedule, which is filed
2 herewith and incorporated by reference.

3 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
4 2699(l), and California Rule of Court 3.769 and 3.764, on the grounds that the proposed class action and
5 Private Attorneys General Act settlement is fair, reasonable, and adequate as to all class members and
6 should be approved by the Court. This motion will be based on the notice of motion, memorandum of
7 points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Lindsay Kline, exhibits,
8 the record and files of this case, and any further oral or documentary evidence introduced at the hearing
9 of this motion.

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

17 Dated: January 18, 2022

Shimoda Law Corp.

18 By: 

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Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

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15 CTE CAL, INC., a California Corporation; and
16 DOES 1 to 100, inclusive,

17 Defendant.

Case No. 34-2020-00289168

Ref. No.: 2590013

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 This Motion is brought seeking final approval of a wage and hour class action settlement in the
3 gross amount of \$450,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and
4 PAGA Settlement and Release). Plaintiff Juan Ruiz (“Plaintiff”) brought this class action individually
5 and on behalf of other similarly situated employees employed by Defendant CTE Cal, Inc.
6 (“Defendant”). Plaintiff worked for Defendant in California from approximately June 1, 2017 to
7 September 18, 2020 and was subject to all the same policies and practices that are alleged to be unlawful
8 in this litigation. *See generally* Exhibit B (Plaintiff's Operative Complaint).

9 Plaintiff has alleged that Defendant failed to pay overtime, failed to pay minimum wages, failed
10 to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements,
11 failed to pay final wages, failed to reimburse expenses, and engaged in unfair competition. *See id.*
12 Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General
13 Act (“PAGA”) based on these violations and Defendant’s alleged failure to provide paid sick leave,
14 untimely payment of wages, failure to pay prevailing wages, and failure to maintain accurate records.
15 *See id.*; Exhibit C (Plaintiff's Ltr. to the LWDA Regarding PAGA Claims). Plaintiff has contended that
16 this is a meritorious class action lawsuit and that this case is appropriate for class certification for
17 settlement purposes as the requisites for class certification in this case can be satisfied. *See* Exhibit B.

18 Defendant has denied, among other things, the allegations that its employees were underpaid;
19 that any Member of the Class has suffered any damages by reason of Defendant's employment policies;
20 or that the Members of the Class were harmed by the conduct alleged in the Action. In addition,
21 Defendant maintains that it has meritorious defenses to all claims alleged in the Action. *See*
22 Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 5. Defendant has also denied that this case is
23 appropriate for class certification other than for purposes of settlement and that Plaintiff would have
24 difficulty proving class certification is proper here. *See id.* However, subject to approval by the Court,
25 the parties have been able to compromise and settle all asserted claims for monetary compensation as a
26 result of extensive investigations, informal document and data exchanges, and extended negotiations
27 relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiff's counsel is convinced that the
28 proposed settlement is in the best interest of the putative class based on the discovery, investigations,

1 negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 3, 6-10. The
2 prospect of potential class certification issues and the uncertainty of class certification, difficulties of
3 complex litigation, the lengthy process of establishing specific damages and various possible delays
4 and appeals were carefully considered by Plaintiff and Plaintiff's counsel in agreeing to the proposed
5 settlement. *See id.*

6 It is well within the discretion of this Court to grant final approval of the proposed settlement,
7 which satisfies all of the criteria for final settlement approval under California law. Accordingly,
8 Plaintiff requests that the Court: (1) certify the proposed settlement class; (2) grant final approval of the
9 proposed class settlement (Exhibit A); and (3) adopt the implementation schedule contained in the
10 proposed order.

11 **II. PROCEDURAL AND LITIGATION HISTORY**

12 Plaintiff filed a class action complaint on approximately November 18, 2020, in the Sacramento
13 County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the
14 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
15 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
16 approximately March 29, 2021 to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
17 motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

18 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

19 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
20 potential damages for such claims. *See id.* Plaintiff worked during the time all of Defendant's policies
21 and practices at issue in the Complaint were in effect and provided information regarding these policies
22 and practices, enabling pre-filing investigations to take place. *See id.* The parties engaged in formal
23 and informal discovery and exchange of documents, including a representative sampling of employee
24 data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of
25 limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims,
26 including certification issues, merits issues, damages, the scope and configuration of Class Members,
27 the content and implementation of the wage and hour policies at issue, issues relating to manageability
28 concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶ 7. The information allowed

1 Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's
2 contentions and create an accurate damages model to assess the reasonableness of any settlement. *See*
3 *id.*

4 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

5 **a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

6 The final settlement occurred only after extended, and sometimes contentious, arm's length
7 negotiations. Over the course of nearly eight (8) months, Plaintiff has been investigating the claims and
8 discussing with Defendant's counsel the merits of the claims and certification issues present in this case.
9 *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and legal analysis
10 regarding the asserted claims. *See id.* Then, only after nearly eight (8) months of litigation and
11 negotiation, which included a full day mediation with David L. Perrault, Esq., the parties were able to
12 reach a mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the
13 parties agreed to a Gross Settlement Amount of \$450,000. *See* Exhibit A.

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

15 Under the settlement agreement, Defendant has agreed to the following:

16 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶
17 1.2, 1.8, 1.9, 1.25):

18 All individuals who have, or continue to, perform work for Defendant in
19 California as hourly, non-exempt employees from November 18, 2019 up
20 to August 29, 2021 ("PAGA Claimants").

21 All individuals who have, or continue to, perform work for Defendant in
22 California as hourly, non-exempt employees from to November 18, 2016
23 up to August 29, 2021 ("Class Members").

24 2. Pay Gross Settlement Amount of \$450,000, exclusive of the employer's share of payroll
25 taxes, to resolve and release the claims alleged in the Complaint. *See id.* at ¶¶ 5.1, 5.2. No portion of
26 the Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.6. PAGA Claimants will still be
27 paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. *See*
28 *id.* at 7.5.1.

3. The parties agree that up to \$15,000 for Plaintiff Juan Ruiz will be paid as a Class
Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be

entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

4. Subject to Court approval, the parties agree that the cost of administering this class action settlement shall be paid from the settlement proceeds. The parties selected Simpluris, Inc. to act as the class action claims administrator, whose costs totaled \$5,000. *See Declaration of Lindsay Kline* (“Decl. Kline”), ¶ 19. The difference between the actual administration costs and the originally allocated \$10,000 under the Agreement will be paid to Class Members on a pro rata basis. *See Exhibit A*, ¶ 5.3.

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

6. The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount (\$157,500) will be paid for Plaintiff’s attorneys’ fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys’ fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation costs as approved by the Court in the amount of \$8,397.43. *See Exhibit D* (“Plaintiff’s Itemized Costs”). The difference between the actual costs and the originally allocated \$12,500 will be redistributed to Class Members on a pro rata basis. *See Exhibit A*, ¶ 5.2. The proposed notice sent to class members stated the maximum cost potential of \$12,500. *See Exh. A to the Declaration of Lindsay Kline.*

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

8. In consideration for the value received in the Agreement, Class Members who did not opt-out of this settlement will forever waive all Qualified Claimant’s Released Claims as set forth in the Agreement. *See Exhibit A*, ¶¶ 1.30-1.31. PAGA Claimants will forever waive all Released PAGA Claims as set forth in the Agreement regardless of whether they opted out of being a Class Member. *See id.* at 1.33, 7.5.1.

9. In consideration for the value received in the settlement agreement, class members will release claims against Defendant, Defendant’s officers, shareholders, directors, agents, employees,

attorneys, and insurers according to their Subclass. The Field Technician/Inspector Subclass will release all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. A Civil Code Section 1542 waiver will apply to these released claims and any claims that could have been brought based on the facts alleged in the operative Complaint whether known or unknown, in order to give full and complete effect to the waiver of these claims. The Non-Field Technician/Inspector Subclass shall release Defendant, Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers from any and all claims under the Healthy Workplaces, Healthy Family Act of 2014, Cal. Lab. Code §§ 245-249, as well as any other claims that could have been alleged based on the facts relating to the sick leave claims alleged in the operative Complaint, through the Class Period. A Civil Code Section 1542 waiver will apply to these released sick leave claims alleged in the operative Complaint, whether known or unknown, in order to give full and complete effect to the waiver of these claims. See Exhibit A, ¶¶ 1.30, 6.2.

10. For any portion of the Net Settlement Sum or PAGA Payment allocated to Qualified Claimants and/or PAGA Claimants that is not claimed by them by cashing their respective settlement checks within 120 days, the remaining amount shall be paid 50/50 to Capital Pro Bono, Inc. and the Center for Workers' Rights under the doctrine of *cy pres*. See Exhibit A, at ¶ 5.6.

c. Allocation of Settlement Funds

Payment to Qualified Claimants and PAGA Claimants of their Claim Amount will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA Payment. For purposes of allocation of the Net Settlement Fund only, subclasses shall be established as follows: 1) Field Technician/Inspector Subclass; and 2) Non-Field Technician/Inspector Subclass. The Field Technician/Inspector Subclass shall be allocated 95% of the Net Settlement Amount and the Non-Field Technician/Inspector Subclass shall be allocated 5% of the Net Settlement Amount. Each Class Member's share will be determined by dividing their total weeks worked within their Subclass during the Class Period by the total weeks worked by all individuals within their Subclass within the Class

1 Period. That fraction will then be multiplied by the Net Settlement Amount allocated to their Subclass
2 to arrive at the Class Member's individual share of the Net Settlement Amount. Each PAGA
3 Claimant's share of the 25% portion of the PAGA Payment will be determined by dividing their total
4 weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Claimants
5 within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA
6 Payment to arrive at the PAGA Claimant's individual share. *See* Exhibit A, at ¶ 5.8.

7 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
8 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

9 Plaintiff's motion for preliminary approval of the class action settlement was granted by the
10 Court, in its entirety, on October 13, 2021. To comply with the class members' due process rights, the
11 parties enlisted an exhaustive method to ensure the best practical means possible was used to provide
12 notice to the class. The parties provided the class action administrator the names, last known address,
13 and social security numbers for the class. The class action administrator then updated this information
14 by doing an address trace for each individual using this information. *See* Decl. Kline, ¶¶ 6-7. If the
15 Notice Packets were returned as undeliverable, further investigation was performed and they were re-
16 mailed using updated information. *See id.* at ¶ 9. Of the 121 Notice Packets mailed all were
17 deliverable after use of these methods. *See id.* The Notice Packets included information regarding the
18 requested attorneys' fees, costs, payment to the LWDA, administration costs, tax allocations, and
19 instructions for opting out of or objecting to the settlement. *See* Decl. Kline, Exh. A.

20 The average distribution to participating class members is approximately \$2,151.67 and the
21 maximum distribution is approximately \$8,462.79. *See id.* at ¶ 16. No objections to the proposed
22 settlement have been received and no class members opted out of the settlement. *See* Decl. Kline, ¶¶
23 11-12.

24 **VI. ARGUMENT**

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

27 A class action may not be dismissed, compromised, or settled without Court approval and the
28 decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules

of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2) (requiring Court review of PAGA settlements). However, courts should give “proper deference to the private consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms agreeable to all parties, a court should disapprove of the settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

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

The purpose of the Court’s final evaluation of a proposed class action settlement is to determine only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant final approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994). To make the fairness determination, the Court must consider several factors, including:

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

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996). Importantly, this Court should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists

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

1 where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery
2 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
3 litigation; and (4) the percentage of objectors is small." *Id.* at 1802.

4 **i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length**
5 **Negotiations Between the Parties**

6 Settlement in this case was reached only after litigation and extensive arm's length negotiations
7 lasting nearly eight (8) months, which included a full day mediation with David L. Perrault, Esq. *See*
8 Decl. Rodriguez, ¶¶ 6-10. At all times, the negotiations were adversarial and contentious, although still
9 professional in nature. *See id.* Further, while Plaintiff contends he would ultimately prevail on the
10 claims and the issue of certification, this is not a certainty and there is substantial risk in proceeding to
11 further litigation. *See id.* at ¶¶ 6-10. The ability to secure a guaranteed settlement now and ensure class
12 members receive some compensation, rather than proceed to further litigation and potentially recover
13 nothing, was a motivating factor in reaching this settlement. *See id.*

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

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

26 //

27 //

28 //

1 **iii. Plaintiff's Counsel is Experienced in Similar Litigation And No Class Members**
2 **Objected To The Settlement Or Opted Out**

3 Plaintiff's counsel has considerable experience in class actions and wage and hour litigation.
4 Plaintiff's counsel has brought and is currently bringing several wage and hour class and/or PAGA
5 actions. Thus, Plaintiff's counsel is qualified to evaluate the class claims, value of settlement versus
6 moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl.*
7 *Rodriguez*, ¶¶ 11-17. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the
8 complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to
9 the class. *See id.* at ¶ 6. This belief is bolstered by the fact that no objection to the settlement have
10 been made by class members and no class members opted out. *See Decl. Kline*, ¶¶ 11-12.

11 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
12 **and the Risks and Costs of Further Litigation**

13 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
14 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 14.9% and a
15 net recovery of approximately 8.6% of the claims' maximum likely value. *See Decl. Rodriguez*, ¶¶ 9-
16 10. Additionally, the average net recovery per class member is approximately \$2,151.67 and the
17 highest net recovery is \$8,462.79. *See Decl. Kline*, ¶ 16. This settlement is a reasonable compromise
18 of the class and PAGA claims and is within the percentile ranges of the total available damages that
19 have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th at 246, 250; *Rebney v.*
20 *Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688
21 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042
22 (2007) (noting that certainty of recovery in settlement of 6% of maximum potential recovery after
23 reduction for attorney's fees was higher than median percentage for recoveries in shareholder class
24 action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017
25 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class
26 members was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring*
27 *Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement with a gross
28 recovery of 11% of the projected maximum damages available and a net recovery of approximately

6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum recovery).

v. The Proposed Settlement is a Reasonable Compromise of Claims

The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional information be presented to the Court, acting as a fiduciary for the absent class members “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to submit an illusory prediction of the outer reaches of exposure without taking into account the actual risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record before the trial court was sufficient, having included the number of class members, payroll data, declarations describing hours and overtime worked, as well as variances in duties and rest and meal period experience, and a companion action alleging less than \$5,000,000 in damages. This information constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*.” *Id.*

Plaintiff similarly relied upon payroll data and Class Members data to determine the realistic potential damages suffered by the class as a whole. *See* Decl. Rodriguez, ¶¶ 6-10. This analysis allowed Plaintiff to determine the extent and frequency of potential violations on all claims as to all Class Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative class that is within the range of what has been found to be sufficient in several other cases. *See, supra*, Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of

1 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
2 approximately \$800 per class member). This settlement represents a reasonable compromise given the
3 percentage of the total demand that was secured, the average recovery per class member, the Court's
4 ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See Decl.*
5 Rodriguez, ¶¶ 9-10.

6 **vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the**
7 **Putative Class Is Reasonable and Routinely Awarded by Courts**

8 The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort
9 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
10 compensate named plaintiffs for the services they provide and the risks they incurred during the course
11 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
12 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
13 recognition of the services they provided to the class by responding to discovery, participating in the
14 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
15 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
16 enhancement payment).

17 In this case, Plaintiff provided and explained documents, being available at all times to discuss
18 the case with Plaintiff's counsel. *See Decl. Rodriguez*, ¶ 7. Plaintiff spent a significant amount of time
19 pursuing this litigation for the benefit of all Class Members. *See id.* Plaintiff brought this action
20 knowing there would be a delay in any payment as the litigation progressed, rather than proceeding on
21 individual claims in front of the California Labor Commissioner. *See id.* Payment of \$15,000 to
22 Plaintiff is appropriate given the risk, assistance, time required in bringing this case and resolution of
23 this case.

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

26 California state and federal courts have recognized that when a litigant's efforts create or
27 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
28 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,

1 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other
2 than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*
3 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
4 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
5 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
6 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation
7 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
8 burden alone.” *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
9 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
10 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
11 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

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

27 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
28 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,

§14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are generally approved as reasonable in wage and hour settlements below \$10 million:

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

See Martin v. Ameripride Servs., 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiffs request of Thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634; *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members to class counsel's fee request further supports finding the fee request reasonable").

These factors support Plaintiff's request for reasonable attorneys' fees. The typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation depending on the complexity of the case. In class action litigation, the typical percentage negotiated between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiff's

request of 35% falls within these typical fee arrangements. *See* Decl. Rodriguez, ¶ 18. The quality of counsel and the average size of settlement payments to Class Members and PAGA Claimants (\$2,151.67) also support the fee request when compared to other settlements courts have considered as good results. *See Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class Members will receive an average of approximately \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the results achieved in this case were very favorable. Class members are provided with immediate monetary relief, with an average award of around several hundred dollars and a minimum award of \$50"). Further, no objections to the settlement have been made by class members and no class members opted out of the settlement. *See* Decl. Kline, ¶¶ 11-12.

c. Certification of the Class is Appropriate

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

i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous

The proposed settlement class is ascertainable because all putative class members can be readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 121 individuals who fall within the definition of Class Member, which makes joinder of all members impracticable. *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to

1 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
2 these requirements are satisfied.

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

4 The commonality requirement is met when there are questions of law or fact regarding the class
5 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
6 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
7 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
8 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
9 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
10 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
11 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
12 named representative are typical of those of the class, though “they need not be substantially identical.”
13 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

14 The common questions of law and fact in this case stem from Plaintiff's contention that
15 Defendant violated California law by These violations primarily stem from Plaintiff's allegations that
16 Defendant violated California law by 1) failing to pay putative class members for all compensable drive
17 time between its lab/office and job sites; 2) failing to correctly calculate putative class members'
18 regular rates of pay due to its failure to incorporate the value of all remuneration paid to putative class
19 members under its drive time policy; 3) failing to authorize and permit putative class members to take
20 all meal and rest periods; 4) failing to pay putative class members all prevailing wages owed for work
21 on public works jobs; 5) failing to pay putative class members all overtime wages owed on public
22 works jobs; 6) failing to incorporate the value of prevailing wage rates into putative class members'
23 regular rates of pay for the purpose of calculating overtime wages on non-public works jobs where
24 putative class members worked on public works and non-public works jobs in the same workweek; and
25 7) failing to reimburse putative class members for gas, mileage, and the use of their personal cellphones
26 for work. *See Exhibit B.* The waiting time penalties, wage statement, unfair competition, and PAGA
27

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

claims are derivative of these violations. *See id.* Plaintiff and the Class Members seek the same remedies under state law. Under these specific circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality requirement, Plaintiff contends he suffered from the same unlawful policies, treatment, and circumstances as Class Members did, will request the same remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

iii. The Adequacy Requirement is Met

The adequacy of representation requirement is met if the named representative and counsel have no interests adverse to those of the putative class members and are committed to vigorously prosecuting the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the preliminarily approved settlement, Plaintiff and the putative class members will receive a pro rata share of the settlement based on the number of workweeks they worked for Defendant. *See Exhibit A.* Finally, any settlement class member who wished to opt-out of the settlement had the opportunity to do so, and he or she also was able to dispute the number of workweeks stated in the Notice of Settlement.

There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class. Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter engaged Defendant's counsel in settlement discussions over the course of nearly eight (8) months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's counsel has vigorously pursued Plaintiff's and the class members' claims, the adequacy requirement is met. *See generally* Decl. Rodriguez.

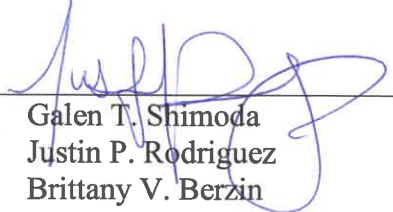
VII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class for settlement purposes; grant final approval to the proposed settlement, including the Plaintiff's enhancement payment, the payment to the LWDA under PAGA, and class counsel's application for reasonable attorneys' fees and costs; find that the Notice of Settlement and administration process

1 satisfied class members' due process rights; and approve the proposed order submitted concurrently
2 herewith.

3
4 Dated: January 18, 2022

Shimoda Law Corp.

5
6 By: 

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Brittany V. Berzin
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7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10
11 JUAN RUIZ, individually and on behalf of all
12 other similarly situated employees,

13 Plaintiff,

14 vs.

15 CTE CAL, INC., a California Corporation; and
DOES 1 to 100, inclusive,

16 Defendant.

Case No. 34-2020-00289168

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: February 16, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: November 18, 2020

FAC Filed: March 29, 2021

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission of Agreement and Motion to LWDA

Dated: January 18, 2022

Shimoda Law Corp.

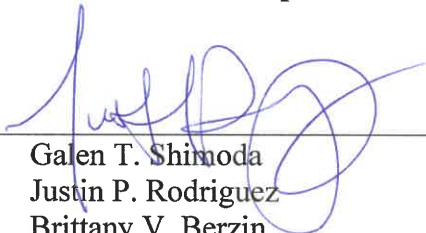
By: 
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 Justin P. Rodriguez
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EXHIBIT A

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

14 JUAN RUIZ, individually and on behalf of all
15 other similarly situated employees,

16 Plaintiff,

17 vs.

18 CTE CAL, INC., a California Corporation ;
19 and DOES 1 to 100, inclusive,
20 Defendants.

Case No.: 34-2020-00289168

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

Filed: November 18, 2020
FAC Filed: March 29, 2021
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement")
2 is made and entered into between the Plaintiff Juan Ruiz ("Plaintiff"), on behalf of himself, the Labor and
3 Workforce Development Agency, and PAGA Claimants, and Defendant CTE Cal, Inc. ("Defendant").
4 This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

5 **1. DEFINITIONS**

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

7 1.1 "Action" means the above stated lawsuit, *Ruiz v. CTE Cal, Inc.*, Sacramento County
8 Superior Court, Case No. 34-2020-00289168, filed November 18, 2020.

9 1.2 "Agreement" or "Settlement" or "Settlement Agreement" means this Joint Stipulation
10 Regarding Class Action and PAGA Settlement and Release.

11 1.3 "Claim Amount" means an individual Qualified Claimant's and PAGA Claimant's
12 allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.19,
13 1.23, 5.5, and 5.8.

14 1.4 "Claims Administrator" means and refers to Simpluris, Inc., the third-party entity that will
15 administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action settlement
16 claims administrator agreed to by the Parties and approved by the Court for the purposes of administering
17 this Agreement. The Parties each represent that they do not have any financial interest in the Claims
18 Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict
19 of interest.

20 1.5 "Claims Administrator Costs" means the fees and expenses reasonably incurred by the
21 Claims Administrator as a result of the procedures and processes expressly required by this Agreement,
22 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
23 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees
24 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
25 Members and/or PAGA Claimants; all costs and fees associated with communicating with Class Members
26 and/or PAGA Claimants, Class Counsel, and Defendant's Counsel; all costs and fees associated with
27 computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and
28 fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to

1 federal and state tax authorities, if any, and issuing tax forms relating to payments made under the
2 Agreement; all costs and fees associated with preparing any tax returns and any other filings required by
3 any governmental taxing authority or agency; all costs and fees associated with preparing any other
4 notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other
5 costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of
6 its duties under this Agreement.

7 1.6 "Class Counsel" means Galen T. Shimoda and Justin P. Rodriguez, of the Shimoda Law
8 Corp.

9 1.7 "Class Member(s)" means all individuals who have, or continue to, perform work for
10 Defendant in California as hourly, non-exempt employees during the Class Period.

11 1.8 "Class Period" means from November 18, 2016 up to either (1) the Preliminary Approval
12 Date, or (2) August 29, 2021, whichever is earlier.

13 1.9 "Class Representative" means Plaintiff Juan Ruiz.

14 1.10 "Complaint" means the operative Complaint on file in the Action with the Court.

15 1.11 "Court" means the Sacramento County Superior Court.

16 1.12 "Defendant" means CTE Cal, Inc.

17 1.13 "Defendant's Counsel" means Schwerdtfeger & Coughlin, LLP.

18 1.14 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
19 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
20 of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a
21 Qualified Claimant.

22 1.15 "Effective Date" means the date a signed order granting final approval of this Agreement
23 has been filed provided there are no objections filed by Class Members prior to the final approval hearing.

24 1.16 "Final Approval Date" means the date a signed order granting final approval of this
25 Agreement is filed with the Court.

26 1.17 "Gross Settlement Amount" is the sum of Four Hundred Fifty Thousand Dollars and No
27 Cents (\$450,000).

28 1.18 "LWDA" means the California Labor and Workforce Development Agency.

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

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

1.21 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice of Settlement to Class Members and PAGA Claimants.

1.22 "PAGA" means Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.23 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act.

1.24 "PAGA Claimant(s)" means all individuals who have, or continue to, perform work for Defendant in California as hourly, non-exempt employees during the PAGA Claim Period.

1.25 "PAGA Claim Period" means November 18, 2019 up to either (1) to the Preliminary Approval Date or (2) August 29, 2021 whichever is earlier.

1.26 "Parties" mean Defendant and Plaintiff.

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

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

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

1.30 "Qualified Claimant's Released Claims" include the claims Class Members will release according to their Subclass. The Field Technician/Inspector Subclass will release all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts

1 alleged in the operative Complaint, through the Class Period. A Civil Code Section 1542 waiver will
2 apply to these released claims and any claims that could have been brought based on the facts alleged in
3 the operative Complaint whether known or unknown, in order to give full and complete effect to the
4 waiver of these claims. The Non-Field Technician/Inspector Subclass shall release any and all claims
5 under the Healthy Workplaces, Healthy Family Act of 2014, Cal. Lab. Code §§ 245-249, as well as any
6 other claims that could have been alleged based on the facts relating to the sick leave claims alleged in the
7 operative Complaint, through the Class Period. A Civil Code Section 1542 waiver will apply to these
8 released sick leave claims alleged in the operative Complaint, whether known or unknown, in order to
9 give full and complete effect to the waiver of these claims. The Qualified Claimant's Released Claims
10 exclude claims for workers' compensation or unemployment insurance benefits. This release will cover
11 all Class Members who do not opt out.

12 1.31 "Qualifying Workweeks" are weeks worked by Class Members and/or PAGA Claimants
13 during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members,
14 workweeks shall be defined as the total length of service (in days) in California during the Class Period
15 divided by seven. For PAGA Claimants, workweeks shall be defined as the total length of service (in
16 days) in California during the PAGA Claim Period divided by seven. The calculation of a Class Member's
17 and/or PAGA Claimant's workweeks and a determination as to whether a Class Member and/or PAGA
18 Claimant was actively employed in California in a particular workweek shall be construed from
19 Defendant's records.

20 1.32 "Released PAGA Claims" means all Private Attorneys General Act claims for civil
21 penalties contained in Plaintiff's letter to the LWDA and the operative Complaint through the PAGA
22 Claim Period. PAGA Claimants cannot opt out of this waiver of claims.

23 1.33 "Released Parties" means Defendant, as well as Defendant's officers, shareholders,
24 directors, agents, employees, attorneys, and insurers.

25 2. DESCRIPTION OF THE LITIGATION

26 2.1 On or about November 18, 2020, Plaintiff sent notice to the LWDA to exhaust
27 administrative remedies under the PAGA for alleged failure to pay overtime, failure to pay minimum
28 wages, failure to provide meal periods, failure to provide rest periods, failure to pay final wages, failure

1 to pay reimbursements for expenses, failure to provide accurate wage statements, failure to provide paid
2 sick leave, untimely payment of wages, violation of Labor Code section 558, failure to pay prevailing
3 wages, and failure to maintain accurate records. The LWDA did not respond to the notice within the
4 statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys
5 General on all alleged PAGA claims.

6 2.2 On or about November 18, 2020 , Plaintiff filed a class action Complaint in Sacramento
7 County Superior Court on behalf of himself and Class Members alleging claims for failure to pay
8 overtime, failure to pay minimum wages, meal period violations, rest period violations, wage statement
9 violations, waiting time penalties, failure to reimburse expenses, and unfair competition. Plaintiff filed a
10 First Amended Complaint on approximately March 29, 2021 to add a PAGA cause of action based on the
11 violations alleged in the November 18, 2020 notice to the LWDA on behalf of himself and PAGA
12 Claimants.

13 2.3 Through formal and informal discovery, Defendant and Defendant's Counsel provided
14 Class Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,
15 information on Class Members including, but not limited to, Class Members' workweeks, dates of
16 employment, total number of Class Members, their rates of pay, contact information, as well as timecard
17 data and payroll reports for Class Members who did not opt out of disclosure. Defendant and Defendant's
18 counsel also provided to Class Counsel extensive analyses of the timecard and payroll data for a randomly
19 selected sample of Class Members, which Defendant contends illustrates that several members of the
20 putative class were actually overpaid by Defendant during the relevant time period.

21 2.4 On June 30, 2021 , the Parties participated in a lengthy mediation with private mediator
22 David L. Perrault. At the conclusion of the mediation, the Parties were able to come to a resolution. At
23 all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

24 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties,
25 document productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and
26 the detailed analysis of the records, including expert analysis, have permitted each side to assess the
27 relative merits of the claims and the defenses to those claims.
28

1 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to pay
2 putative class members for all compensable drive time between its lab/office and job sites; 2) failing to
3 correctly calculate putative class members' regular rates of pay due to its failure to incorporate the value
4 of all remuneration paid to putative class members under its drive time policy; 3) failing to authorize and
5 permit putative class members to take all meal and rest periods; 4) failing to pay putative class members
6 all prevailing wages owed for work on public works jobs; 5) failing to pay putative class members all
7 overtime wages owed on public works jobs; 6) failing to incorporate the value of prevailing wage rates
8 into putative class members' regular rates of pay for the purpose of calculating overtime wages on non-
9 public works jobs where putative class members worked on public works and non-public works jobs in
10 the same workweek; and 7) failing to reimburse putative class members for gas, mileage, and the use of
11 their personal cellphones for work.

12 2.7 In the Action, Defendant has denied, and continues to deny, that it has committed any act
13 or omission giving rise to any liability under the California wage and hour laws or any other labor laws
14 or regulations. Specifically, Defendant expressly has denied, and continues to deny, each and all of the
15 claims alleged by Plaintiff in the Action, including, without limitation, any liability arising out of any of
16 the conduct, policies, practices, statements, acts or omissions alleged, or that could have been alleged, in
17 the Action. Defendant also has denied, and continues to deny, among other things, the allegations that its
18 employees were underpaid; that any Member of the Class has suffered any damages by reason of
19 Defendant's employment policies; or that the Members of the Class were harmed by the conduct alleged
20 in the Action or that could have been alleged as part of the Action. In addition, Defendant maintains that
21 it has meritorious defenses to all claims alleged in the Action. As set forth herein, neither the Settlement
22 nor any of the terms of this Agreement shall constitute an admission or finding of any fault, liability,
23 wrongdoing or damage whatsoever or any infirmity in the defenses that Defendant has, or could have,
24 asserted. Defendant is entering into this Agreement to eliminate the burden, expense and uncertainties of
25 further litigation.

26 2.8 Defendant also has denied, and continues to deny, that this Action is appropriate for class
27 certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount
28 was reached after evaluating the Parties' theories of potential exposure for the underlying claims and the

1 class data supporting these claims. The Parties, with the assistance of the mediator, also assessed
2 appropriate discounts to the potential liability based on Defendant's factual and legal contentions and
3 defenses.

4 2.9 The Parties agree that the above-described investigation and evaluation, as well as
5 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
6 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class
7 Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled
8 in a manner and upon such terms and conditions set forth herein in order to avoid further expense,
9 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
10 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
11 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for
12 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts
13 and circumstances.

14 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

15 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
16 of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
17 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
18 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
19 conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the
20 Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement
21 shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or
22 utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain
23 subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence
24 408, and any other analogous rules of evidence that may be applicable.

25 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
26 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
27 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
28 the Final Approval Date does not occur, Defendant does not waive, but rather expressly reserves, all rights

to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.7 and all PAGA Claimants as defined in Section 1.24. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

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

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

4.4 If Defendant does agree that the person listed in a data request is a Class Member and/or PAGA Claimant, the Claims Administrator shall promptly mail a Notice of Settlement to the person who submitted the data request, at the address designated for that purpose in the data request. All provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements sent in response to data requests, and any person who submits a data request and is sent a Notice of Settlement in

response shall be treated by the Claims Administrator as a Class Member and/or PAGA Claimant for all other purposes.

4.5 If Defendant does disagree that the person listed in a data request is a Class Member and/or PAGA Claimant, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records shall control unless the individual submitting the data request provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Claims Administrator. The decision by the Claims Administrator shall be final and there shall be no right of appeal.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendant shall pay the Gross Settlement Amount (\$450,000). Funding of the Gross Settlement Amount shall occur no later than December 1, 2021 or seven (7) days after the Final Approval Date, whichever is later, to be held in trust in a QSF by the Claims Administrator until distribution is made pursuant to this Agreement, provided that a signed order granting final approval of this Agreement has been filed. The Gross Settlement Amount includes payments to Qualified Claimants, PAGA Claimants, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative, and the PAGA Payment. Any monies necessary to satisfy Defendant's tax obligations (e.g. employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% or \$157,500 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.

1 Defendant has agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not
2 exceed the \$157,500 threshold. Class Counsel will also be entitled to reimbursement for advanced
3 litigation expenses not to exceed \$12,500, which shall be paid from the Gross Settlement Amount.
4 Defendant has agreed to not oppose Class Counsel's request for reimbursement for advanced litigation
5 expenses so long as they do not exceed the \$12,500 threshold. The Claims Administrator will issue Class
6 Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that
7 the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts
8 not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Qualified
9 Claimants on a pro rata basis.

10 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
11 Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
12 allocated \$10,000 shall be added to the Net Settlement Amount.

13 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
14 an Enhancement Payment to the Class Representative in an amount not to exceed Fifteen Thousand
15 Dollars and No Cents (\$15,000.00) to compensate for the risks, time, and expense of his involvement in
16 the Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment
17 is in addition to the Claim Amount Plaintiff would otherwise be due under the Agreement as a Qualified
18 Claimant. Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to
19 Plaintiff so long as it does not exceed the amount stated herein. The Enhancement Payment will be
20 designated as a non-wage payment and reported on an IRS Form 1099. In the event that the Court awards
21 less than the Enhancement Payment amount requested, then any portion of the requested amount not
22 awarded to the Class Representative shall be added to the Net Settlement Amount to be distributed to
23 Qualified Claimants on a pro rata basis.

24 5.5 PAGA Payment: Five Thousand Dollars and No Cents (\$5,000) of the Gross Settlement
25 Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA
26 Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to PAGA Claimants on
27 a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated
28

PAGA Payment shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

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

5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants and PAGA Claimants shall be deemed to be income solely in the year in which such amounts were actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not entitle any Qualified Claimant or PAGA Claimant to any new or additional compensation or benefits under any company bonus or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Qualified Claimant PAGA Claimant to any increased retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Qualified Claimants and PAGA Claimants in connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and PAGA Claimants of their Claim Amount will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA Payment. For purposes of allocation of the Net Settlement Fund only, subclasses shall be established as follows: 1) Field Technician/Inspector Subclass; and 2) Non-Field Technician/Inspector Subclass. The Field Technician/Inspector Subclass shall be allocated 95% of the Net Settlement Amount and the Non-Field Technician/Inspector Subclass shall be allocated 5% of the Net Settlement Amount. Each Class Member's share will be determined by dividing their total weeks worked within their Subclass during the Class Period by the total weeks worked by all individuals within their Subclass within the Class

Period. That fraction will then be multiplied by the Net Settlement Amount allocated to their Subclass to arrive at the Class Member's individual share of the Net Settlement Amount. Each PAGA Claimant's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Claimants within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the PAGA Claimant's individual share.

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

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

5.9.2 Two thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive an IRS Form 1099-MISC.

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

5.10 Qualified Claimants and PAGA Claimants shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.

No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Qualified Claimants, the payments to PAGA Claimants, the payments to Class Counsel, the payments to the Class Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this Agreement.

5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible for the costs of the Claims Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.7 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and PAGA Claimants.

6. RELEASE

6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as set forth in Section 1.30 as to all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's Released Claims against any of the Released Parties.

1 6.2 California Civil Code section 1542 Waiver: California Civil Code section 1542
2 specifically provides:

3 A general release does not extend to claims that the creditor or releasing
4 party does not know or suspect to exist in his or her favor at the time of
5 executing the release and that, if known by him or her, would have
6 materially affected his or her settlement with the debtor or released party.

7 Notwithstanding California Civil Code section 1542, Qualified Claimants are waiving
8 Qualified Claimant's Released Claims as set forth in Section 1.30, whether known or unknown, suspected
9 or unsuspected.

10 6.3 Release of Claims by PAGA Claimants: Upon the Effective Date, all PAGA Claimants
11 will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties.
12 In addition, on the Effective Date, all PAGA Claimants and their successors in interest will be permanently
13 enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the
14 Released Parties.

14 7. **SETTLEMENT ADMINISTRATION**

15 7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1)
16 receiving Class Member and PAGA Claimant contact information and confirming addresses are valid; 2)
17 calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts, including
18 Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members and PAGA
19 Claimant whose address or contact information as provided to the Claims Administrator is inaccurate or
20 outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the
21 appropriate state and federal officials of this Agreement as required under the law; 5) receiving,
22 independently reviewing, and resolving any challenges (in consultation with Class Counsel and
23 Defendant's Counsel) from Class Members or PAGA Claimants, including any associated documentation,
24 regarding their Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendant's
25 Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a
26 toll free telephone line and responding to inquiries and requests for information or assistance from Class
27 Members and/or PAGA Claimants; 8) maintaining a QSF; 9) determining and paying the final amounts
28 due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded

attorneys' fees and costs, Claims Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or PAGA Claimants; 10) determining the validity of any disputes or late opt-outs by previously unidentified Class Members or PAGA Claimants; 11) paying any residual funds from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to Qualified Members and PAGA Claimants; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

7.2 Notice to Class Members and PAGA Claimants: The Notice of Settlement will provide Class Members and PAGA Claimants with a summary of the terms and conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying Workweeks and/or assigned subclass, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class Members and PAGA Claimants of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees and costs allocations, proposed Enhancement Payments, proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's and PAGA Claimant's estimated Claim Amount and assigned subclass.

1 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
2 Preliminary Approval Date, Defendant shall provide the Claims Administrator with the name, last known
3 mailing address, last known telephone number, Social Security Number, start and end date of employment
4 (if any) of each Class Member, and any other information the Claims Administrator needs to effectuate
5 notice to Class Members and PAGA Claimants as outlined herein. The Claims Administrator shall review
6 the data to determine the number of Qualifying Workweeks for each Class Member and PAGA Claimant.
7 No later than fourteen (14) calendar days after receipt of such address information, the Claims
8 Administrator will perform a national change of address ("NCOA") search, update the addresses per the
9 results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as
10 Exhibit 1, to each Class Member and PAGA Claimant by first-class mail, postage prepaid. The Claims
11 Administrator shall maintain all information received from Defendant confidential to itself, and
12 Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of Qualified
13 Workweeks and estimated Claim Amounts for Class Members and PAGA Claimants prior to mailing for
14 quality assurance provided the personal identifying information is redacted and/or omitted.

15 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
16 is returned to the Claims Administrator as non-delivered on or before the conclusion of the Notice Period,
17 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar
18 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to
19 determine a correct address using a single skip-trace, computer or other search using the name, address
20 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
21 five (5) calendar days. Following each search that does not result in a corrected address, for those Class
22 Members who appear to be current employees of Defendant at the time of the Preliminary Approval Date,
23 the Claims Administrator shall contact Defendant's Counsel for assistance and Defendant shall cooperate
24 in good faith with the Claims Administrator's reasonable efforts to obtain valid mailing addresses for
25 Class Members to the extent they are active employees of Defendant. In the event the Notice of Settlement
26 is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to
27 submit any request to opt-out, dispute, or objection shall be the end of the Notice Period or 10 days from
28 the date of the re-mailing, whichever is later. In the event the procedures in this Section are followed and

1 the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by
2 all terms of the Agreement, including the Releases contained in Section 6.

3 7.5 Responses to Notice of Settlement:

4 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish
5 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.
6 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that
7 he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants
8 to be excluded from the settlement; (c) identify the case name and number (i.e. Ruiz v. CTE Cal, Inc. , 34-
9 2020-00289168); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period
10 or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to
11 opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the
12 postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request
13 to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will
14 not be entitled to any benefit of the Agreement or any portion of the Net Settlement Amount, will not be
15 bound by the Agreement, nor will they have any right to object, appeal or comment thereon. Class
16 Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the
17 Agreement and any order or final judgment thereon, regardless of whether they otherwise have requested
18 to opt-out of the Agreement. PAGA Claimants cannot opt out of this Agreement as it relates to the PAGA
19 Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member.

20 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes
21 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
22 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and
23 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
24 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
25 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
26 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify
27 the case name and number (i.e. Ruiz v. CTE Cal, Inc. , 34-2020-00289168) (e) be signed; and (f) be post-
28 marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4.

1 The objecting Class Member must also file a notice of intent to appear with the Court and serve the notice
2 on Class Counsel and Defendant's Counsel, if they intend to appear at the final approval hearing.

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

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

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

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

6 7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff: no
7 later than December 1, 2021 or seven (7) days after the Final Approval Date, whichever is later, and after
8 the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the
9 Enhancement Payment payable to Plaintiff, the PAGA Payment, and Claims Administrator Costs, the
10 Claims Administrator shall calculate the final Net Settlement Amount, the final Claim Amounts for
11 Qualified Claimants and/or PAGA Claimants, any applicable taxes thereon, and report the results of these
12 calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount
13 and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Claims
14 Administrator to be to be held in trust in a QSF. Within fourteen (14) calendar days after the settlement
15 has been funded, the Claims Administrator shall deliver payment of Class Counsels' fees and costs, the
16 Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA,
17 Claims Administrator Costs, and payment to Qualified Claimants and/or PAGA Claimants as required
18 under this Agreement and approved by Court.

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

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

26 7.8.3 Only Qualified Claimants and PAGA Claimants will receive their Claim Amount.

27 7.8.4 The Claims Administrator shall remit and report the applicable portions of the
28 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this

Agreement. Defendant agrees to reasonably cooperate with the Claims Administrator to the extent necessary to determine the amount of the payroll tax payment required.

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

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

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

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

Last day for Defendant to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendant

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

9. **DUTIES OF THE PARTIES**

9.1 **Preliminary Approval:** The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement

1 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to
2 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final
3 approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the
4 Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments
5 and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from
6 Class Counsel. With regard to the final approval documents, a similar one-week maximum review and
7 response time shall be observed by the Parties. The Parties will request that the Court's preliminary
8 approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and
9 PAGA Settlement.

10 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
11 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
12 Notice of Settlement by first class mail to Class Members and PAGA Claimants; 4) Preliminarily
13 appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving
14 settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving
15 the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment
16 of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
17 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
18 approved as fair, reasonable and adequate as to the Class Members.

19 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
20 Agreement.

21 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during
22 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
23 appropriate to assure effective communication to individual Class Members of information about their
24 rights and obligations under this Agreement.

25 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
26 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
27 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
28 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice

of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Claim Administrator's mailings including tracing and re-mailing efforts.

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

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

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

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

10. MISCELLANEOUS TERMS

10.1 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT

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

21 10.2 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
22 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
23 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
24 and discharged in this Agreement.

25 10.3 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
26 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
27 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
28 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

1 10.4 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
2 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
3 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

4 10.5 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval Date,
5 judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties
6 to enforce the terms therein.

7 10.6 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
8 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
9 execution of such other documents and the taking of such other action as may reasonably be necessary to
10 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
11 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
12 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

13 10.7 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
14 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
15 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
16 Complaint, the representative character of the Action, the validity of any of the claims that were or could
17 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
18 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
19 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or
20 any other person, and Defendant specifically disclaims any liability, culpability, negligence, or
21 wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered
22 into this Stipulation with the intention to avoid further disputes and litigation.

23 10.8 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
24 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
25 the third business day after mailing by United States certified mail, return receipt requested, addressed as
26 follows:
27
28

To Plaintiff and the Class:

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

To Defendant:

Sean D. Schwerdtfeger
Catherine L. Coughlin
Sara K. Richards
Schwerdtfeger & Coughlin, LLP
501 West Broadway, Suite 2040
San Diego, CA 92101

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

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

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

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

1 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
3 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
4 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
5 this Agreement.

6 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
7 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
8 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
9 may be executed on behalf of all Class Members by the Class Representative.

10 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
11 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
12 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
13 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
14 and effect of originals.

15 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
16 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
17 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
18 with, and governed by, the substantive laws of the State of California without giving effect to that State's
19 choice of law principles.

20 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
21 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
22 this Agreement, or any provision thereof.

23 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could
24 be construed as retaliation against any Class Members for participating or seeking to participate in this
25 class action settlement. The Parties will not discourage any class member from participating or seeking
26 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
27 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
28 shall be entitled to further attorneys' fees and costs.

1 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
2 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
3 Each party acknowledges that there is no representation, inducement, promise or agreement which has
4 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
5 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
6 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

7 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
8 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

9 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
10 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
11 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

12 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
13 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
14 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

15 ///

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19 ///

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22 ///

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24 ///

25 ///

26 ///

27 ///

28 ///

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

3 **For Plaintiff:**

4 Date: 9/2/2021
5 _____

DocuSigned by:



6 Juan Ruiz

7 **For Defendant:**

8 Date: _____
9

By: _____
10 For CTE Cal, Inc.

11
12
13
14 APPROVED AS TO FORM

15
16 Dated: 9/2/2021
17 _____

Shimoda Law Corp.

18 By: _____
19

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and PAGA Claimants

20 APPROVED AS TO FORM

Schwerdtfeger & Coughlin LLP

21
22 Dated: _____
23

By: _____

Sean D. Schwerdtfeger
Catherine L. Coughlin
Sara K. Richards
Attorney for Defendant

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

3 For Plaintiff:

4 Date: _____

Juan Ruiz

7 For Defendant:

8 Date: 9-3-2021



9 By:
10 For CTE Cal, Inc.

11
12
13
14 APPROVED AS TO FORM

Shimoda Law Corp.

16 Dated: _____

17 By: _____
18 Galen T. Shimoda
19 Justin P. Rodriguez
20 Brittany V. Berzin
21 Attorney for Plaintiff and PAGA Claimants

22 APPROVED AS TO FORM

Schwerdtfeger & Coughlin LLP

23 Dated: 9.3.2021

24 By: 
25 Sean D. Schwerdtfeger
26 Catherine L. Coughlin
27 Sara K. Richards
28 Attorney for Defendant

Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

JUAN RUIZ, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

CTE CAL, INC., a California Corporation; and
DOES 1 to 100, inclusive,

Defendant.

Case No. 34-2020-00289168

CLASS ACTION

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

ATTENTION: all individuals who have, or continue to, perform work for CTE Cal, Inc. in California as hourly, non-exempt employees from to November 18, 2016 to _____ (the "Class Members").

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

Pursuant to an order from the Sacramento County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on _____, you are receiving notice of a proposed class action settlement between Plaintiff Juan Ruiz ("Plaintiff" or "Class Representative"), and Defendant CTE Cal, Inc. ("Defendant") on behalf of Class Members as defined above. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked _____ workweeks during the applicable Class Period (as defined below) within the [Field Technician/Inspector Subclass / Non-Field Technician/Inspector Subclass], which means your share of the settlement proceeds is estimated to be _____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

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

I. BACKGROUND OF THE CASE

On November 18, 2020, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of Sacramento on behalf of himself and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2020-00289168. The Class Period is November 18, 2016 to _____ (the "Class Period").

In the Action, Plaintiff sought to obtain allegedly unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendant violated California law by failing to pay overtime, failing to pay minimum wages, failing to provide meal periods, failing to provide rest periods, failing to provide accurate wage statements, failing to pay final wages, failing to reimburse expenses, failing to pay paid sick leave, untimely payment of wages, failing to pay prevailing wages, failing to maintain accurate records, and engaging in unfair competition. Plaintiff also alleged Defendant is liable for civil penalties under the Private Attorneys General Act.

Defendant has denied, and continues to deny, that it has adopted any policy or committed any act or omission giving rise to any liability under any the California wage and hour laws or any other wage and hour laws or regulations. Defendant also has denied, and continues to deny, among other things, the allegations that its employees were underpaid; that any Member of the Class has suffered any damages by reason of Defendant's employment policies; or that the Members of the Class were harmed by the conduct alleged in

the Action or that could have been alleged as part of the Action.

The Action has been actively litigated. There has been an independent investigation, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

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

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant agrees to pay a total sum of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$157,500, attorneys' costs not to exceed \$12,500, Claims Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$15,000, and \$5,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$5,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among PAGA Claimants, which are defined as all individuals who have, or continue to, perform work for Defendant in California as hourly, non-exempt employees from November 18, 2019 to ____.

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

B. Claim Amounts and Allocation Between Class Members and PAGA Claimants

Defendant will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to PAGA Claimants. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to PAGA Claimants will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and PAGA Claimants will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA Payment. For purposes of allocation of the Net Settlement Amount and the waiver of claims associated with the payment, subclasses shall be established as follows: 1) Field Technician/Inspector Subclass; and 2) Non-Field Technician/Inspector Subclass. The Field Technician/Inspector Subclass shall be allocated 95% of the Net Settlement Amount and the Non-Field Technician/Inspector Subclass shall be allocated 5% of the Net Settlement Amount. This allocation is commensurate with the damages each respective Subclass was calculated to have experienced relative to each other based facts and theories of liability asserted. Each Class Member's share will be determined by dividing their total weeks worked within their Subclass during the Class Period by the total weeks worked by all individuals within their

Subclass within the Class Period. That fraction will then be multiplied by the Net Settlement Amount allocated to their Subclass to arrive at the Class Member's individual share of the Net Settlement Amount. Each PAGA Claimant's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Claimants within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the PAGA Claimant's individual share. Receipt of the Claim Amounts will not entitle any Class Member or PAGA Claimant to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek/Subclass Disputes

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

D. Release of Claims

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

Class Members who do not opt out will release claims according to their Subclass. The Field Technician/Inspector Subclass shall release all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. A Civil Code Section 1542 waiver will apply to these released claims and any claims that could have been brought based on the facts alleged in the operative Complaint, whether known or unknown, in order to give full and complete effect to the waiver of these claims. The Non-Field Technician/Inspector Subclass shall release any and all claims under the Healthy Workplaces, Healthy Families Act of 2014, Cal. Lab. Code §§ 245-249, as well as any other claims that could have been alleged based on the facts relating to the sick leave claims alleged in the operative Complaint, through the Class Period. A Civil Code Section 1542 waiver will apply to these released sick leave claims and any claims that could have been brought based on the facts regarding the sick leave claims alleged in the operative Complaint, whether known or unknown, in order to give full and complete effect to the waiver of these claims. California Civil Code section 1542 specifically provides:

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.

Notwithstanding California Civil Code section 1542, Class Members who do not opt out of this settlement will waive all the released claims according to their subclass as outlined above, whether known or unknown, suspected or unsuspected. PAGA Claimants will release all Private Attorneys General Act claims for civil penalties contained in Plaintiff's letter to the LWDA and/or operative Complaint, through the PAGA Claim Period.

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

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

E. Attorneys' Fees and Costs

Defendant has agreed to pay Plaintiff's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$157,500, and attorneys' costs not to exceed \$12,500. Class Counsel's fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

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

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

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

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (i.e., "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (i.e. Ruiz v. CTE Cal, Inc., 34-2020-00289168); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

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

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. Ruiz v. CTE Cal, Inc., 34-2020-00289168) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Claims Administrator at the address identified in section IIIB and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

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

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and PAGA Claimant, will release Defendant and the Released Parties from the released claims described above according to their respective subclass. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered

by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 54, 813 6th Street Sacramento, CA 95814 on _____ at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

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

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

Sean D. Schwerdtfeger
Catherine L. Coughlin
Sara K. Richards
Schwerdtfeger & Coughlin, LLP
501 West Broadway, Suite 2040
San Diego, CA 92101
Telephone: (619) 595-3403
Facsimile: (619) 595-3404
On behalf of Defendant

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

BY ORDER OF THE COURT

EXHIBIT B

FILED BY FAX

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 Shimoda Law Corp.
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JUAN RUIZ
10 on behalf of himself and similarly situated employees

FILED/ENDORSED

MAR 29 2021

By: N. Zavaad
Deputy Clerk

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

JUAN RUIZ, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

CTE CAL, INC., a California Corporation; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00289168

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff JUAN RUIZ ("Plaintiff"), on behalf of himself and all other similarly situated employees, hereby files this Complaint against Defendants CTE CAL, INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

FIRST AMENDED CLASS ACTION COMPLAINT

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INTRODUCTION

7 1. This is a class action and representative Private Attorneys General Act action brought by
8 Plaintiff for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal and
9 rest periods, wage statement violations, waiting time penalties, failure to reimburse work expenses, and
10 unfair competition and statutory and civil penalties for violations of the California Labor Code.

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JURISDICTION AND VENUE

15 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
16 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
17 Labor Code, California Business and Professions Code, and Wage Order No. 16.

18 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
19 Defendants reside in Sacramento county. In addition, some of the wrongful acts and violations of law
20 asserted herein occurred within Sacramento county, and Defendants' obligation to pay wages arose in
21 Sacramento county pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
22 (1984).

23 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
24 claims set forth in this Complaint against Defendants as Private Attorney Generals on behalf of himself
25 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
26 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
27 approximately November 18, 2020. Plaintiff provided facts and legal bases for the claims within the
28 notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
Plaintiff submitted the \$75.00 filing fee. The November 18, 2020 notice was also sent via certified mail
to Defendants on the same day. Plaintiff is informed and believes, that, to date, the LWDA has not
provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
believes that he has exhausted all administrative remedies pursuant to the Private Attorneys General Act
and may bring this action on behalf of himself and all similarly situated employees. See Cal. Labor
Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385
n.19 (2005).

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PARTIES

5. JUAN RUIZ is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, CTE CAL, INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries, and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

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

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership, and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership, and common enterprise.

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

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

CLASS ALLEGATIONS

12. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

1 All individuals who have, or continue to, perform work for Defendants in
2 California as hourly, non-exempt employees from four (4) years prior to
the filing of this Complaint to the present.

3 13. This action has been brought and may be properly maintained as a class action,
4 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
5 defined community of interests in the litigation and the proposed class is easily ascertainable.

6 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
7 is impracticable under the circumstances of this case. While the exact number of class
8 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
9 Defendants have employed as many as fifty (50) individuals falling within the above
10 stated class definition throughout the State of California during the applicable statute of
11 limitations, who were subjected to the policies and practices outlined in this Complaint.
12 As such, joinder of all members of the putative class is not practicable.

13 (b) Common Questions Predominate: Common questions of law and fact exist as to all
14 members of the putative class and predominate over questions that affect only individual
15 members of the class. These common questions of law and fact include, without
16 limitation, the following:

- 17 (1) Whether Defendants paid Plaintiff and putative class members for all hours
18 worked;
- 19 (2) Whether Defendants paid Plaintiff and putative class members all overtime wages
20 they were owed;
- 21 (3) Whether Defendants had a policy or practice of failing to take into account
22 different rates of pay paid to Plaintiff and putative class members, including rates
23 paid for drive time and prevailing wages, to calculate their regular rates of pay;
- 24 (4) Whether Defendants failed to authorize and permit Plaintiff and putative class
25 members to take meal periods;
- 26 (5) Whether Defendants failed to authorize and permit Plaintiff and putative class
27 members to take rest periods;
- 28 //

- 1 (6) Whether Defendants failed to authorize and permit second meal periods and third
2 rest periods when Plaintiff and putative class members worked over 10 hours in a
3 day;
4 (7) Whether Defendants failed to authorize and permit Plaintiff and putative class
5 members to begin meal periods before the end of their fifth hour of work;
6 (8) Whether Defendants had a policy and practice requiring Plaintiff and putative
7 class members to remain on the work premises during the meal and rest periods;
8 (9) Whether as a result of Defendants' policies and practices Plaintiffs and putative
9 class members received all wages, due and owing, at the time of their termination
10 or separation; and
11 (10) Whether Defendants provided Plaintiffs and putative class members with wage
12 statements that complied with Labor Code section 226.

13 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
14 class. The putative class also sustained damages arising out of Defendants' common
15 course of conduct in violation of the law as complained of herein. Plaintiff and all
16 members of the putative class were non-exempt employees who were not paid for all
17 hours worked and all overtime wages earned, did not receive all meal and rest periods,
18 and were not reimbursed for the use of their personal cellphones. Additionally,
19 Defendants issued Plaintiff and all members of the putative class wage statements that
20 did not comply with Labor Code section 226 and failed to timely pay them their final
21 wages. As a result, Plaintiff and each member of the putative class will have suffered the
22 same type of harm and seek the same type of recovery based on the same legal theories.

23 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
24 putative class. For all relevant times, Plaintiff resided in California and worked for
25 Defendants in California. Moreover, Plaintiff is an adequate representative of the
26 putative class as Plaintiff has no interests that are adverse to those of putative class
27 members. Additionally, Plaintiff has retained counsel who has substantial experience in
28 complex civil litigation and wage and hour matters.

1 (e) Superiority: A class action is superior to other available means for the fair and efficient
2 adjudication of the controversy since individual joinder of all members of the putative
3 class is impracticable. Class action treatment will permit a larger number of similarly
4 situated persons to prosecute their common claims in a single forum simultaneously,
5 efficiently, and without the unnecessary duplication of effort and expense that numerous
6 individual actions would engender. Further, as damages suffered by each individual
7 member of the class may be relatively small, the expenses and burden of the individual
8 litigation would make it difficult or impossible for individual members of the class to
9 redress the wrongs done to them, and an important public interest will be served by
10 addressing the matter as a class action. The cost to the court system of adjudication of
11 such individualized litigation would be substantial. Individualized litigation would also
12 present the potential for inconsistent or contradictory judgments.

13 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action.

15 GENERAL ALLEGATIONS

16 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
17 set forth herein.

18 16. Plaintiff worked for Defendants from approximately June 1, 2017 to September 18, 2020
19 as an hourly, non-exempt employee. Defendants failed to pay Plaintiff and similarly situated employees
20 for all hours spent driving for work purposes, including time from Defendants' lab/office location to the
21 first job site. Plaintiff and similarly situated employees had to obtain materials and equipment necessary
22 to complete their job tasks from Defendants' lab/office location and transport that to various worksites.
23 Defendants only paid for this drive time when certain, limited types of equipment or materials were
24 being transported instead of whenever Plaintiff and similarly situated employees had to travel to the
25 lab/office for transporting materials and equipment. Due to the nature of Plaintiff's and similarly
26 situated employees work, they were unable to obtain the materials by any other means than going to the
27 lab/office location and transporting them to the worksite.

28 //

1 17. Defendants utilized a compensation policy that paid Plaintiff and similarly situated
2 employees an hourly rate for driving in excess of one (1) hour to the first job site and one (1) hour back
3 from the last job site to home. Defendants did not aggregate the time spent driving into the total hours
4 worked for purposes of calculating overtime hours. Defendants also did not account for the hours or the
5 value of payments made under this policy when calculating the regular rate for purposes of premium
6 wage and/or sick leave wage determinations or the total amount of overtime wages owed. Defendants
7 also utilized a rate of sick leave accrual for hourly employees that was less than 1 hour for every 30
8 hours worked and did not allow employees to begin accruing sick leave based on the amount of hours
9 worked for the first 90 days of employment, which was considered an employee's introductory period.
10 Defendant regularly deducted time beyond the one (1) hour limits set by the drive time policy, causing
11 further unpaid wages and wage statements that did not accurately reflect the hours that Plaintiff and
12 similarly situated employees work.

13 18. Defendants utilized a reimbursement policy that paid Plaintiff and similarly situated
14 employees for mileage at a rate of twenty-two (22) cents per mile for mileage in excess of fifty (50)
15 miles, each way, from the closer of the lab/office or the employees residence to the first job site.
16 However, Plaintiffs were required to pay for gas for their vehicles for all miles driving, and were
17 regularly not reimbursed for all gas payments made as a result of this policy.

18 19. Plaintiff and similarly situated employees worked on prevailing wage jobs as well as non-
19 prevailing wage jobs for Defendants. Sometimes Plaintiff and similarly situated employees would work
20 non-prevailing wage jobs and prevailing wage jobs in the same day and/or the same workweek.
21 Although Defendants paid Plaintiff and similarly situated employees some prevailing wages owed,
22 Defendants failed to pay Plaintiff and similarly situated employees all prevailing wages they were
23 entitled to. There were numerous instances where Defendants only paid Plaintiff and similarly situated
24 employees their non-prevailing wage rates rather than the correct prevailing wage rates even though
25 Plaintiff and similarly situated employees were working on government funded projects and
26 construction worksites. Plaintiff is informed and believes that Defendants were aware that the work
27 performed was subject to prevailing wage law and that Defendants lacked any good faith basis for
28 failing to pay the prevailing wage rates, including overtime based on the prevailing wage rates.

1 20. Plaintiff and similarly situated employees worked over eight (8) hours in a day and/or
2 forty (40) hours in a week on numerous occasions. By failing to account for all hours worked by
3 Plaintiff and similarly situated employees, including drive time, and by failing to account for the value
4 of all payments made when calculating the regular rate of pay, including blending prevailing wage and
5 non-prevailing wage earnings in the same workweek for purposes of calculating the overtime rate of pay
6 on non-prevailing wage work during that same workweek, Defendants also failed to pay Plaintiff and
7 similarly situated employees all overtime wages owed and sick leave wages.

8 21. Defendants did not authorize and permit Plaintiff and similarly situated employees to take
9 a full, uninterrupted thirty (30) minute meal period every five (5) hours and ten (10) minute rest periods
10 every four (4) hours or major fraction thereof. Defendants required Plaintiff and similarly situated
11 employees to remain at the job site, so Plaintiff and similarly situated employees were unable to leave
12 the premises to take a meal or rest period. Additionally, to the extent Plaintiff and similarly situated
13 employees were able to take a meal period, Defendants did not have a policy or practice to relieve
14 Plaintiff and similarly situated employees for a full thirty (30) minutes and did not have any policy or
15 practice for the meal period to begin before the end of Plaintiff's and similarly situated employees' fifth
16 hour of work. Plaintiff and similarly situated employees were regularly deprived of the ability to take a
17 second meal period or third rest period when they work over ten (10) or twelve (12) hours in a day.

18 22. Defendants did not timely pay Plaintiff and similarly situated employees all wages owed
19 to them. Defendants failed to pay Plaintiff and similarly situated employees all wages they earned
20 between the 1st and 15th days of the month between the 16th and the 26th day of the month during
21 which the work was performed, and all wages they earned between the 16th and the last day of the
22 month between the 1st and 10th day of the following month. Defendant's regularly altered Plaintiff and
23 similarly situated employees time records from what was submitted to payroll and deducted otherwise
24 compensable time under Defendants' own policies and California law. The alternations and striking of
25 hours caused Defendants' failure to keep and maintain accurate records of the hours Plaintiff and
26 similarly situated employees worked, including time spent during any meal periods.

27 23. Defendants failed to reimburse Plaintiff and similarly situated employees for all expenses
28 they incurred for work, including the use of their personal cellphones. Defendants required Plaintiff and

1 similarly situated employees to use their personal cellphones for work but failed to have any policy or
2 practice to reimburse them for such use.

3 //

4 24. Defendants failed to provide Plaintiff and similarly situated employees with accurate
5 wage statements. The wage statements did not accurately itemize Plaintiff's and similarly situated
6 employees' total hours worked, all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate, and the correct amount of gross and net
8 wages.

9 25. At the time of Plaintiff's and similarly situated employees' termination and/or separation,
10 Plaintiff and similarly situated employees had regular and overtime wages owing to them, meal and rest
11 period premiums, and paid sick time. To date, Defendants have not paid Plaintiff and similarly situated
12 employees these unpaid wages.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**
15 **FAILURE TO PAY OVERTIME WAGES**
16 **(As to all Defendants)**

17 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
18 set forth herein.

19 27. During the period Plaintiff was employed by Defendants, Defendants were required to
20 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
21 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
22 hours worked in excess of twelve (12) hours per day. See, e.g., IWC Wage Order No. 16, section
23 (3)(A); Cal. Lab. Code §§ 510, 1194.

24 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
25 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
26 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
27 worked at their regular rate of pay due to Defendants failing to pay Plaintiff and similarly situated
28 employees for all time spent driving and failing to take into account different rates of pay Plaintiff and
similarly situated employees earned when calculating their regular rates of pay.

1 29. Plaintiff and similarly situated employees were not exempt from overtime protections
2 employees under the California Wage Orders and Labor Code.

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

6 **SECOND CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGES**
8 **(As to all Defendants)**

9 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
10 set forth herein.

11 32. For the period preceding the filing of this Complaint, Defendants were required to
12 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
13 every hour worked. See MW-Order 2019; IWC Wage Order, No. 16, section 4(A); Cal. Lab. Code §
14 1194.

15 33. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
16 obligation to pay the minimum wage for each hour worked but failed to do so as Defendants failed to
17 pay Plaintiff and similarly situated employees for all time they spent driving.

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

21 **THIRD CAUSE OF ACTION**
22 **MEAL PERIOD VIOLATIONS**
23 **(As to all Defendants)**

24 35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully
25 set forth herein.

26 36. An employer must provide an employee a meal period in accordance with the
27 applicable Wage Order, and California Labor Code sections 226.7 and 512.

28 37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section
10(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
minutes for each work period of more than five (5) hours.

1 38. California Labor Code section 512 and Wage Order No. 16 section 10(B) further
2 provide that employers may not employ employees for a work period for more than ten (10) hours
3 per day without providing the employee with a second meal period of at least thirty (30) minutes.
4 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
5 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
6 (1) hour of pay at their regular rate of compensation for each meal period not provided.

7 39. Defendants employed Plaintiff and similarly situated employees for periods of more
8 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
9 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
10 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
11 employees to take their first meal period before the completion of their fifth hour of work and failed
12 to allow Plaintiff and similarly situated employees to take their second meal period before the
13 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
14 rights to all meal periods throughout their employment.

15 40. Defendants further failed to pay Plaintiff and similarly situated employees the
16 applicable meal period premiums for any such missed meal breaks.

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

20 **FOURTH CAUSE OF ACTION**
21 **REST PERIOD VIOLATIONS**
22 **(As to all Defendants)**

23 42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully
24 set forth herein.

25 43. An employer must provide an employee a rest period in accordance with the
26 applicable Wage Order and California Labor Code section 226.7.

27 44. California Labor Code section 226.7 and Wage Order No. 16, section 11(A) require
28 an employer to provide a rest period of not less than ten (10) minutes for each work period of more
than four (4) hours or a major fraction thereof.

1 45. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
2 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
3 they worked more than four (4) hours or a major fraction thereof.

4 46. Defendants further failed to pay Plaintiff and similarly situated employees the
5 applicable rest period premiums for any such missed rest periods.

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

9 **FIFTH CAUSE OF ACTION**
10 **WAGE STATEMENT VIOLATIONS**
11 **(As to all Defendants)**

12 48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully
13 set forth herein.

14 49. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
15 statement to an employee, semimonthly or at the time of each payment of wages, showing:

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

50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
itemized statement or failed to provide an accurate and complete itemized statement showing the

1 requirements set forth in California Labor Code section 226(a). Defendants did not accurately
2 itemize total hours worked, all applicable hourly rates in effect during the pay period, all regular,
3 overtime and double time hours worked and corresponding rates of pay, and gross and net wages
4 earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees'
5 total hours worked due to Defendants' policy of failing to pay for all drive time. Plaintiff and
6 similarly situated employees were not able to promptly and easily determine their total hours worked
7 from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered
8 confusion over whether they received all wages owed and were prevented from effectively
9 challenging information on their wage statements.

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

13 **SIXTH CAUSE OF ACTION**
14 **WAITING TIME PENALTIES**
15 **(As to all Defendants)**

16 52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully
17 set forth herein.

18 53. An employer must pay an employee who is terminated all unpaid wages immediately
19 upon termination. See Cal. Lab. Code § 201.

20 54. An employer must pay an employee who resigns all unpaid wages within seventy-two
21 (72) hours of their resignation. See Cal. Lab. Code § 202.

22 55. Plaintiff and similarly situated employees did not receive all wages, including minimum
23 and overtime wages, meal and rest period premiums, and paid sick time owed at their termination or
24 within the required time after their separation from employment.

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

28 57. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
their final wages when their employment terminated. Indeed, Defendants had knowledge of the time

1 Plaintiff and similarly situated employees spent driving but failed to pay them for all of this time.
2 Additionally, Defendants had knowledge that their meal and rest period policies and practices failed to
3 authorize and permit all meal and rest period owed, which resulted in missed meal and rest periods.
4 Defendants also had knowledge that they were paying Plaintiff and similarly situated employees
5 multiple different rates of pay but failed to take them into account for the purpose of calculating
6 Plaintiff's and similarly situated employees' regular rates of pay. Such conduct shows Defendants had
7 knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the
8 remaining wages owed.

9 58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
10 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
11 thirty (30) days for Defendants' failure to pay all wages due.

12 **SEVENTH CAUSE OF ACTION**
13 **FAILURE TO REIMBURSE EXPENSES**
14 **(As to all Defendants)**

15 59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully
16 set forth herein.

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

22 61. Defendants required Plaintiff and similarly situated employees to use their personal
23 cellphones for work but failed to reimburse them for such use. Plaintiffs and similarly situated
24 employees were also required to pay for all gas associated with driving the vehicles but only reimbursed
25 for a small fraction of the total use of the vehicles.

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

//

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

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

65. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, meal and rest period premiums, and paid sick time, during their employment or any time thereafter. Additionally, Defendants failed to pay Plaintiff and similarly situated employees all prevailing wages they were owed. Indeed, Plaintiff and similarly situated employees worked some prevailing wage jobs that Defendants failed to pay them any prevailing wages for, including overtime on prevailing wages.

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

67. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, 1771, 1774, 1815, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

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

68. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 67 as though fully set forth herein.

//

1 69. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
2 following provisions of the Labor Code in their dealings with him and other similarly situated current
3 and former employees:

- 4 a. Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to
5 Pay Overtime Wages)
6 b. Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay
7 Minimum Wages)
8 c. Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 10(A) and 10(B)
9 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
10 d. Violation of Labor Code § 226.7 and Wage Order No. 16, § 11(A) (Failure to Provide
11 Rest Periods or Pay Premiums in Lieu Thereof)
12 e. Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
13 f. Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
14 g. Violation of Labor Code §§ 226, 226.3, 1776 (Failure to Provide Accurate Wage
15 Statements)
16 h. Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
17 i. Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)
18 j. Violation of Labor Code § § 1171, 1774 (Failure to Pay Prevailing Wages)
19 k. Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
20 Work in Any Industrial Welfare Commission Order)
21 l. Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

22 70. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no
23 civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

24 71. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections
25 2699(a) and 2699.3.

26 //

27 //

28 //

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

- 1 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
2 226(e);

3 7. As to the Seventh Cause of Action:

- 4 a. An amount to be proven at trial;
5 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

6 8. As to the Ninth Cause of Action:

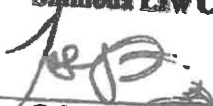
- 7 a. For civil penalties as provided for in the Labor Code for each enumerated
8 violation;
9 b. For those Labor Code sections, the violation of which there is no civil penalty
10 provided, the default penalty provided in Labor Code section 2699(f): for any
11 initial violation, one hundred dollars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

17 9. For such other and further relief as this Court may deem just and proper,
18 including, but not limited to:

- 19 a. Wages as proved at trial;
20 b. Injunctive and Declaratory relief;
21 c. Attorney's fees and costs as provided for by law; and
22 d. Interest.

23
24 Dated: March 8, 2021

Shimoda Law Corp.

25
26
27 By: 

28 Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

1 Ruiz v. CTE Cal, Inc.

2 Sacramento Superior Court Case No. 34-2020-00289168

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

5 I, Rylee K. Fonseca, declare that:

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

8 On March 29, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint For Damages

10 Sean D. Schwerdtfeger, Esq. (SBN 179521)
11 Catherine L. Coughlin, Esq. (SBN 295812)
12 Sara K. Richards, Esq. (SBN 317603)
13 SCHWERDTFEGER LAW GROUP, APC
14 501 West Broadway, Suite 2040
15 San Diego, CA 92101
16 Telephone: (619) 595-3403
17 Facsimile: (619) 595-3404
18 sds@sdsattorneys.com
19 clc@sdsattorneys.com

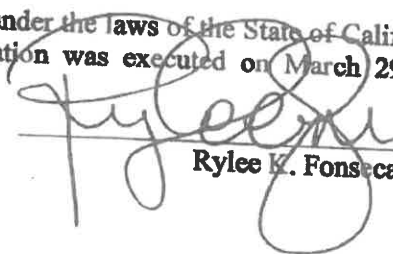
20 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
21 processing of correspondence for mailing with the United States Postal Service
22 and that each day's mail is deposited with the United States Postal Service that
23 same day in the ordinary course of business. On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

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

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

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

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


Rylee K. Fonseca

PROOF OF SERVICE

EXHIBIT C



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

November 18, 2020

For Online Filing:

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

Re: *Ruiz v. CTE CAL, Inc.*

Dear Labor Commissioner,

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

CTE CAL, Inc.
3628 Madison Ave., Ste. 22
North Highlands, CA 95660

Rodney Ballard
3628 Madison Ave., Ste. 22
North Highlands, CA 95660

Kim Ballard
3628 Madison Ave., Ste. 22
North Highlands, CA 95660

Mike Kennedy
3628 Madison Ave., Ste. 22
North Highlands, CA 95660

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against CTE CAL, Inc., Rodney Ballard, Kim Ballard, and Mike Kennedy ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all individuals who have, or continue to, perform work for Defendants in California as hourly, non-exempt employees from one year prior to the date of this notice to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*,



23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants from approximately June 1, 2017 to September 18, 2020 as an hourly, non-exempt employee. Defendants failed to pay Plaintiff and similarly situated employees for all hours spent driving for work purposes, including time from Defendants' lab/office location to the first job site. Plaintiff and similarly situated employees had to obtain materials and equipment necessary to complete their job tasks from Defendants' lab/office location and transport that to various worksites. Defendants only paid for this drive time when certain, limited types of equipment or materials were being transported instead of whenever Plaintiff and similarly situated employees had to travel to the lab/office for transporting materials and equipment. Due to the nature of Plaintiff's and similarly situated employees work, they were unable to obtain the materials by any other means than going to the lab/office location and transporting them to the worksite.

Defendants utilized a compensation policy that paid Plaintiff and similarly situated employees an hourly rate for driving in excess of one (1) hour to the first job site and one (1) hour back from the last job site to home. Defendants did not aggregate the time spent driving into the total hours worked for purposes of calculating overtime hours. Defendants also did not account for the hours or the value of payments made under this policy when calculating the regular rate for purposes of premium wage and/or sick leave wage determinations or the total amount of overtime wages owed. Defendant regularly deducted time beyond the one (1) hour limits set by the policy, causing further unpaid wages and wage statements that did not accurately reflect the hours that Plaintiff and similarly situated employees work.

Defendants utilized a reimbursement policy that paid Plaintiff and similarly situated employees for mileage at a rate of twenty-two (22) cents per mile for mileage in excess of fifty (50) miles, each way, from the closer of the lab/office or the employees residence to the first job site. However, Plaintiffs were required to pay for gas for their vehicles for all miles driving, and were regularly not reimbursed for all gas payments made as a result of this policy.

Plaintiff and similarly situated employees worked on prevailing wage jobs as well as non-prevailing wage jobs for Defendants. Sometimes Plaintiff and similarly situated employees would work non-prevailing wage jobs and prevailing wage jobs in the same day and/or the same workweek. Although Defendants paid Plaintiff and similarly situated employees some prevailing wages owed, Defendants failed to pay Plaintiff and similarly situated employees all prevailing wages they were entitled to. There were numerous instances where Defendants only paid Plaintiff and similarly situated employees their non-prevailing wage rates rather than the correct prevailing wage rates even though Plaintiff and similarly situated employees were



working on government funded projects and construction worksites. Plaintiff is informed and believes that Defendants were aware that the work performed was subject to prevailing wage law and that Defendants lacked any good faith basis for failing to pay the prevailing wage rates, including overtime based on the prevailing wage rates.

Plaintiff and similarly situated employees worked over eight (8) hours in a day and/or forty (40) hours in a week on numerous occasions. By failing to account for all hours worked by Plaintiff and similarly situated employees, including drive time, and by failing to account for the value of all payments made when calculating the regular rate of pay, including blending prevailing wage and non-prevailing wage earnings in the same workweek for purposes of calculating the overtime rate of pay on non-prevailing wage work during that same workweek, Defendants also failed to pay Plaintiff and similarly situated employees all overtime wages owed and sick leave wages.

Defendants did not authorize and permit Plaintiff and similarly situated employees to take a full, uninterrupted thirty (30) minute meal period every five (5) hours and ten (10) minute rest periods every four (4) hours or major fraction thereof. Defendants required Plaintiff and similarly situated employees to remain at the job site, so Plaintiff and similarly situated employees were unable to leave the premises to take a meal or rest period. Additionally, to the extent Plaintiff and similarly situated employees were able to take a meal period, Defendants did not have a policy or practice to relieve Plaintiff and similarly situated employees for a full thirty (30) minutes and did not have any policy or practice for the meal period to begin before the end of Plaintiff's and similarly situated employees' fifth hour of work. Plaintiff and similarly situated employees were regularly deprived of the ability to take a second meal period or third rest period when they work over ten (10) or twelve (12) hours in a day.

Defendants did not timely pay Plaintiff and similarly situated employees all wages owed to them. Defendants failed to pay Plaintiff and similarly situated employees all wages they earned between the 1st and 15th days of the month between the 16th and the 26th day of the month during which the work was performed, and all wages they earned between the 16th and the last day of the month between the 1st and 10th day of the following month. Defendant's regularly altered Plaintiff and similarly situated employees time records from what was submitted to payroll and deducted otherwise compensable time under Defendants' own policies and California law. The alternations and striking of hours caused Defendants' failure to keep and maintain accurate records of the hours Plaintiff and similarly situated employees worked, including time spent during any meal periods.

Defendants failed to reimburse Plaintiff and similarly situated employees for all expenses they incurred for work, including the use of their personal cellphones. Defendants required Plaintiff and similarly situated employees to use their personal cellphones for work but failed to have any policy or practice to reimburse them for such use.



Defendants failed to provide Plaintiff and similarly situated employees with accurate wage statements. The wage statements did not accurately itemize Plaintiff's and similarly situated employees' total hours worked, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and the correct amount of gross and net wages.

At the time of Plaintiff's and similarly situated employees' termination and/or separation, Plaintiff and similarly situated employees had regular and overtime wages owing to them, meal and rest period premiums, and paid sick time. To date, Defendants have not paid Plaintiff and similarly situated employees these unpaid wages.

Rodney Ballard, Kim Ballard, and Mike Kennedy are the owners, directors, officers, and/or managing agents of CTE CAL, Inc. and caused each and every one of the aforementioned Labor Code violations.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

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

Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendant they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.,* IWC Wage Order MW-2019; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.



Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 10(A) and 10(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 10(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 16, section 10(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Four - Violation of Labor Code § 226.7 and Wage Order No. 16, § 11(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 11(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendant also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

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

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

Count Six - Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

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



personal cellphones for work by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count Seven – Violation of Labor Code §§ 226, 226.3, 1776 (Failure to Provide Accurate Wage Statements)

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

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

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

//



Count Nine – Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

Labor Code section 204(a) provides that “all wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. As stated above, Defendant failed to comply with this provision by paying Plaintiff and Aggrieved Employees for wages earned between the 1st and 15th and between the 16th and last day of the month beyond the maximum time allowed under the statute. This was in violation of the law.

Count Ten – Violation of Labor Code § § 1171, 1774 (Failure to Pay Prevailing Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid a prevailing wage for all work performed on public works projects. *See* Cal. Lab. Code § § 1771, 1774. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees all prevailing wages owed to them. This is against the law.

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

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

Count Twelve – Violation of Labor Code § § 226.3, 1174 (Failure to Maintain Accurate Records)



Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

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

Very truly yours,

Shimoda Law Corp.

By: _____


Justin P. Rodriguez

JPR:bb

cc: Client via e-mail

1 Ruiz v. CTE CAL, Inc.

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

4 I, Melissa A. Phillips, declare that:

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

7 On November 18, 2020, I served the following documents on the party below:

8 • Private Attorney General Act Letter

9 CTE CAL, Inc.
10 3628 Madison Ave., Ste. 22
11 North Highlands, CA 95660

Rodney Ballard
3628 Madison Ave., Ste. 22
North Highlands, CA 95660

12 Kim Ballard
13 3628 Madison Ave., Ste. 22
14 North Highlands, CA 95660

Mike Kennedy
3628 Madison Ave., Ste. 22
North Highlands, CA 95660

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

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

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

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

29 I declare under penalty of perjury under the laws of the State of California that the foregoing
30 is true and correct, and that this declaration was executed on November 18, 2020, at Elk Grove,
31 California.

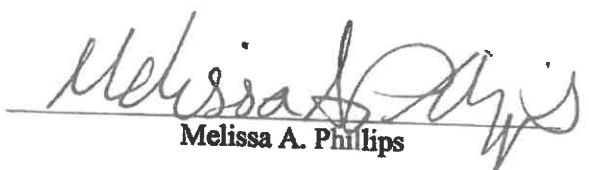
32 
33 Melissa A. Phillips

EXHIBIT D

Date	Description	Cost
11/18/2020	Payment to Court - Complaint Fee Superior Court	\$435.00
11/18/2020	Service Fee to Court - Complaint	\$40.00
11/18/2020	Payment to LWDA - PAGA Filing Fee	\$75.00
11/18/2020	Certified Mail - PAGA letters to employers	\$16.80
12/1/2020	Admin/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Westlaw Research Fees	\$500.00
12/4/2020	Payment for Records - PRA Documents	\$2.85
12/17/2020	Service Fee to Court - Complex Fees	\$40.00
12/17/2020	Payment to Court - Complex Fees	\$1,000.00
12/21/2020	Payment for Records - PRA Documents (2nd Batch)	\$9.69
12/24/2020	ALS Service Fee - CTE CAL inv 158525	\$55.00
3/9/2021	Service Fee to Court - Stipulation and Proposed Protective Order and Stipulation to Amend Complaint	\$40.00
3/9/2021	Payment to Court - Stipulation to Amend	\$20.00
3/9/2021	Payment to Court - Stipulation and Proposed Protective Order	\$20.00
3/22/2021	Mediation - Mediation Fee to Judicate	\$3,000.00
3/29/2021	Service Fee to Court - First Amended Complaint	\$40.00
5/19/2021	Payment to ILYM Group Inc. re Belaire notice	\$113.39
5/27/2021	Service Fee to Court - Joint Case Management Statement	\$40.00
7/1/2021	Mediation - Attorney Lunch	\$15.20
7/15/2021	Mediation - Consulting Fee - Data Analysis and Calculation of Damages	\$2,587.50
9/13/2021	Payment to Court - Preliminary Approval Motion	\$60.00
9/13/2021	Service Fee to Court - Preliminary Approval Motion	\$40.00
10/5/2021	Service Fee to Court - Case Management Statement	\$40.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	Service Fee to Court - Final Approval Motion	\$40.00
Anticipated	Service to OC - Final Approval Motion	\$27.00
Anticipated	Service Fee to Court - Case Management Statement	\$40.00
Anticipated	Service Fee to Court - Settlement Compliance Declaration	\$40.00
TOTAL:		\$8,397.43

EXHIBIT E

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

5 Attorneys for Plaintiff JUAN RUIZ
6 individually and on behalf of similarly situated employees

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

11 JUAN RUIZ, individually and on behalf of all
12 other similarly situated employees,

13 Plaintiff,

14 vs.

15 CTE CAL, INC., a California Corporation; and
DOES 1 to 100, inclusive,

16 Defendant.
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Case No. 34-2020-00289168

CLASS ACTION

**DECLARATION OF JUSTIN P.
RODRIGUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: February 16, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: November 18, 2020

FAC Filed: March 29, 2021

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

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

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention
9 that Defendant CTE Cal, Inc. ("Defendant") failed to pay overtime, failed to pay minimum wages,
10 failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage
11 statements, failed to pay final wages, failed to reimburse expenses, and engaged in unfair competition.
12 Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act ("PAGA")
13 based on the allegations above and allegations that Defendant failed to provide paid sick leave, failed to
14 pay prevailing wages, and failed to maintain accurate records. These claims were based allegations that
15 Defendant violated California law by 1) failing to pay putative class members for all compensable drive
16 time between its lab/office and job sites; 2) failing to correctly calculate putative class members'
17 regular rates of pay due to its failure to incorporate the value of all remuneration paid to putative class
18 members under its drive time policy; 3) failing to authorize and permit putative class members to take
19 all meal and rest periods; 4) failing to pay putative class members all prevailing wages owed for work
20 on public works jobs; 5) failing to pay putative class members all overtime wages owed on public
21 works jobs; 6) failing to incorporate the value of prevailing wage rates into putative class members'
22 regular rates of pay for the purpose of calculating overtime wages on non-public works jobs where
23 putative class members worked on public works and non-public works jobs in the same workweek; and
24 7) failing to reimburse putative class members for gas, mileage, and the use of their personal cellphones
25 for work. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims
26 also derive from these violations.

27 3. Plaintiff is the only named representative in this matter. From our initial investigations
28 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a

1 class action. We filed the action on or about November 18, 2020. Plaintiff exhausted administrative
2 remedies through the Labor and Workforce Development Agency ("LWDA") prior to amending the
3 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on November 18, 2020
4 setting forth the facts and theories of liability. A true and correct copy of the notice filed with the
5 LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant
6 via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no
7 response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for
8 more than 65 days. As such, Plaintiff became authorized to commence a civil action under the PAGA
9 and filed a First Amended Complaint on March 29, 2021. A true and correct copy of Plaintiff's
10 operative Complaint is filed with this Motion as Exhibit B. A copy of the complaint was uploaded to
11 the LWDA on May 7, 2021, after we received an endorsed copy back from Court.

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

13 5. Defendant is represented in this matter by Sean D. Schwerdtfeger, Catherine L.
14 Coughlin, and Sara K. Richards of Schwerdtfeger and Coughlin, LLP. From the beginning, Defendant
15 has contested the merits of this case, the suitability of the case for class action or representative
16 treatment, the manageability of the case at trial, and Plaintiff's ability to prove a violation in each pay
17 period for each employee among other defenses and contentions they made challenging the propriety of
18 this action. Defendant further contended that some Class Members were overpaid and, even assuming
19 there was a finding supporting the imposition of PAGA penalties, the Court would likely exercise its
20 discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to
21 comply with Labor Code obligations by Defendant. Notwithstanding its agreement to settle this matter,
22 Defendant believes the practices Plaintiff contends are unlawful either do not exist or, to the extent they
23 do exist, fully comply with all state and federal employment laws with respect to Plaintiff and Class
24 Members. Also, Defendant has contended that this matter is not appropriate for class certification
25 outside of this proposed class settlement.

26 6. Based on the expected testimony from Plaintiff and Class Members, a review of
27 Defendant's policies and procedures and other documents relating to the alleged claims, information on
28 the number of Class Members, and a representative sample of Class Members' payroll data, the scope of

1 the potential damages to Plaintiff and Class Members in light of the claims alleged, the uncertainty in
2 the law with regard to certification, and the negotiations that have taken place, I am convinced that the
3 proposed settlement is in the best interest of the class. The length and risks of trial and other normal
4 perils of litigation that impact the value of the claims were also considered and weighed in reaching the
5 Agreement. In addition, I carefully considered the prospect of potential class certification issues as well
6 as the uncertainty of class certification, the difficulties of complex litigation, and the lengthy process of
7 establishing specific damages and various possible delays and appeals in agreeing to the proposed
8 settlement. I further considered the fact that penalties under the PAGA could be substantially cut at the
9 discretion of the Court even if Plaintiff was successful on proving those claims and there was risk that a
10 Court could find no willfulness in the failure to pay wages at separation, which would eliminate the
11 value of the waiting time penalty entirely. Overall, I believe it is more beneficial to secure a guaranteed
12 benefit to the class now rather than to proceed with litigation and potentially obtain zero funds to the
13 class due to legal or factual issues in the case.

14 7. My office, including my partner, Galen T. Shimoda, my paralegals, and myself, along
15 with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for
16 such claims. The parties engaged in formal discovery and an informal exchange of documents for
17 mediation, including a representative sampling of employee data, such as timecards and paystubs and
18 relevant policies for the entirety of the statute of limitations applicable to the alleged claims. Defendant
19 also provided Plaintiff with contact information for putative class members after a *Belaire* notice
20 procedure. The discovery covered all aspects of the asserted claims, including certification issues,
21 merits issues, damages, the scope and configuration of Class Members, the content and implementation
22 of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other
23 relevant areas. From this production we were able to determine information critical to a reliable
24 damages analysis such as the average hourly rate, average daily hours worked, average number of
25 workweeks and pay periods that had potential violations based on the asserted claims, the frequency
26 with which violations occurred in a given week and/or pay period, and the number for former
27 employees. This information allowed my office to assess both liability and damages and create an
28 accurate damages model. Plaintiff assisted in all aspects of this litigation including providing factual

1 information relating to Plaintiff's and similarly situated employees' employment conditions, providing a
2 substantial number of documents, and answering questions regarding Defendant's factual contentions in
3 this matter. This was important because it directly related to our ability to maintain this case as a class
4 action and our ability to obtain a favorable settlement for the class.

5 8. Throughout this litigation our office had numerous communications with Defendant's
6 Counsel discussing our respective positions. The parties engaged in mediation on June 30, 2021 using
7 an experienced mediator, David L. Perrault, Esq. It was only after nearly eight (8) months of extensive,
8 arm's length negotiations that the parties were able to reach a settlement, which only occurred after a
9 full-day mediation. The negotiations were at all times contentious and adversarial, though still
10 professional in nature.

11 9. The parties reviewed and analyzed substantial amounts of data regarding the class
12 claims. Based on our analysis and review of all relevant documents and Class Member information, I
13 have determined that the maximum damages for the asserted class claims is approximately
14 \$3,667,179.93, which includes civil penalties under the PAGA. The likely exposure for PAGA
15 penalties is approximately \$786,544.50, based on the counts alleged to the LWDA and the class data.
16 Based on our research, we did not find any prior Labor Commissioner or court decisions that stated
17 Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be
18 found for penalty calculation purposes and the exposure analysis here is based on an "initial violation"
19 valuation being adopted by any fact finder if this matter went to trial.

20 10. I believe the PAGA penalties in this case may be reduced however due to the fact that
21 the penalties would be in addition to amounts owed for substantive violations and much of the penalties
22 are based on violations due to technical non-compliance with the Labor Code. Furthermore, Defendant
23 produced a substantial number of documents that a Court may find demonstrates a good faith attempt at
24 compliance that merits the reduction of civil penalties. Courts regularly cut civil penalties on PAGA
25 claims where statutory penalties for the same violations are assessed as well. The statutorily authorized
26 discretion that Courts have used to reduce penalties ranges substantially. *See Thurman v. Bayshore*
27 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*,
28 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Thus, civil penalties may be

1 cut to approximately \$141,578.01 (82% reduction) or lower given the derivative recovery. Taking this
2 into account, the likely recovery if Plaintiff was successful at trial on proving all the substantive class
3 damages plus civil penalties after a reduction of the PAGA penalties would be approximately
4 \$3,022,213.44. Taking this into account, Plaintiff's \$450,000 gross recovery under the Agreement
5 represents approximately 14.9% of the maximum likely value in this matter. After deducting from the
6 Gross Settlement Amount the proposed allocations for attorneys' fees (\$157,500) and costs (\$12,500),
7 any Enhancement Payment to the Class Representative (\$15,000), Claims Administrator Costs
8 (\$10,000), and the 75% portion of the PAGA Payment to the LWDA (\$3,750), the net recovery under
9 the Agreement of \$260,352.57 represents approximately 8.6% of the maximum likely value in this
10 matter. Based on the final numbers from the administrator, the average recovery for class members is
11 approximately \$2,151.67 and the maximum recovery is approximately \$8,462.79. The Agreement
12 allocates 95% of the net recovery to the Field Technician/Inspector Subclass and 5% of the net
13 recovery to the Non-Field Technician/Inspector Subclass. The Field Technician/Inspector Subclass
14 was subject to all of the violations alleged by Plaintiff whereas the Non-Field Technician/Inspector
15 Subclass were only affected by Plaintiff's sick leave allegation. The 5% allocation is commensurate
16 with the Non-Field Technician/Inspector Subclass' share of the damages for sick leave violations. The
17 average net award for the Field Technician/Inspector Subclass is approximately \$2,461.47 and the
18 average net award for the Non-Field Technician/Inspector Subclass is \$616.91. I believe the
19 Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this
20 case. The ability to secure a guaranteed settlement now and ensure Class Members receive some
21 compensation, rather than proceed to further litigation and potentially recover nothing, was a
22 motivating factor in reaching this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 applicable to this case. I agreed to take this case on a contingency and as a class action with the
2 possibility that I would not receive any compensation for my time and efforts due to issues regarding
3 the merits and/or certification and have carried that risk over the course of the case. I have reviewed
4 fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five
5 percent (35%) fee request is within the accepted ranges and eminently reasonable in light of the results
6 obtained for the putative class, which is an average net recovery of \$2,151.67 and a high recovery of
7 \$8,462.79. In my experience with contingency cases in employment law cases, the typical percentage
8 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual
9 litigation. In class action litigation, my experience in my own firm and working with several other
10 firms has been that the typical percentage negotiated between parties and approved by a court ranges
11 from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed several
12 recent Federal District Court Cases where the Court has approved common fund based fee requests.
13 These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson*
14 *v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored,*
15 *Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*,
16 USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District,
17 Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-
18 00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695,
19 which are cited in Plaintiff's Memorandum of Points and Authorities. I believe my request of \$157,500
20 (approximately 35%) for attorneys' fees is justified given the results obtained on behalf of the class.
21 Moreover, at this time, my firm has advanced all costs for Plaintiff and Class Members and has not
22 received any compensation whatsoever for our time expended in this case. The expected costs through
23 final approval are \$8,397.43. Attached as Exhibit D is a true and correct copy of the costs incurred
24 prior to the filing of this Motion and the expected costs incurred through the final approval and fairness
25 hearing. The difference in the actual costs and the \$12,500 allocated under the Agreement will be
26 added to the Net Settlement Amount.

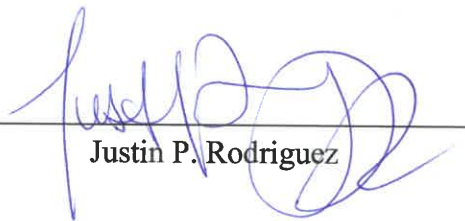
27 19. I have used several class action administrator companies in the wage and hour class
28 actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer

1 the proposed class settlement. Simpluris, Inc.'s costs for administering the settlement are \$5,000.00.
2 The difference between the actual costs and \$10,000 allocated under the Agreement will be added to the
3 Net Settlement Amount.

4 20. A copy of the Agreement and this entire Motion were submitted to the LWDA for review
5 at the same time this Motion was submitted to the Court pursuant to California Labor Code section
6 2699(1)(2). A true and correct copy of the LWDA's confirmation of receipt of these documents is being
7 filed with this Motion as Exhibit E.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct. Executed this 18th day of January 2022 in Elk Grove, California.

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Justin P. Rodriguez

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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5 Attorneys for Plaintiff JUAN RUIZ
6 individually and on behalf of similarly situated employees

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

11 JUAN RUIZ, individually and on behalf of all
12 other similarly situated employees,

13 Plaintiff,

14 vs.

15 CTE CAL, INC., a California Corporation; and
DOES 1 to 100, inclusive,

16 Defendant.
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Case No. 34-2020-00289168

CLASS ACTION

**DECLARATION OF LINDSAY KLINE
REGARDING NOTICE AND SETTLEMENT
ADMINISTRATION**

Date: February 16, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: November 18, 2020

FAC Filed: March 29, 2021

Trial Date: None Set

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1 are available during normal business hours. The toll-free telephone number included in the Notice of
2 Class Action Settlement was (888) 369-3780 and was live on November 10, 2021.

3 **NOTIFICATION TO THE CLASS**

4 5. On October 14, 2021, Simpluris received the Court-approved Notice of Proposed Class
5 Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement (hereafter
6 “Notice”). The Notice advised Class Members of their right to request exclusion from the Settlement,
7 object to the Settlement, dispute workweeks or Subclass, do nothing, and the implications of each such
8 action. The Notice advised Class Members of applicable deadlines and other events, including the Final
9 Approval Hearing, and how Class Members could obtain additional information.

10 6. On October 26, 2021, Defense Counsel provided Simpluris with a mailing list (“Class
11 List”) containing Class Members’ names, most recent mailing address, Social Security numbers and dates
12 of employment for each Class Member during the Class Period. The Class List contained data for one
13 hundred twenty-one (121) Class Members.

14 7. The mailing addresses contained in the Class List were processed and updated utilizing
15 the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. The NCOA
16 contains requested changes of address filed with the U.S. Postal Service. In the event that any individual
17 had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be
18 utilized in connection with the mailing of the Class Notice. Simpluris was able to locate fifteen (15)
19 updated addresses using NCOA prior to the mailing of the Class Notice.

20 8. On November 10, 2021, Notice was mailed to one hundred twenty-one (121) Class
21 Members with addresses contained in the Class List via First Class mail or updated via the NCOA search.
22 A copy of the Notice is attached hereto as **Exhibit A**.

23 9. A total of three (3) Notices were returned to Simpluris. Of these, two (2) were returned
24 with a forwarding address. If a Class Member’s Notice was returned by the USPS as undeliverable and
25 without a forwarding address, Simpluris performed an advanced address search (i.e. skip trace) on all of
26 these addresses by using Accurant, a reputable research tool owned by Lexis-Nexis. Simpluris used the
27 Class Member’s name and previous address to locate a current address. Through the advanced address
28

1 searches, Simpluris was able to locate one (1) updated address and Simpluris promptly mailed a Notice
2 to the updated address. As of today, there are not any Notices that remain undeliverable.

3 **REQUESTS FOR EXCLUSION, OBJECTIONS AND DISPUTES**

4 10. The deadline for Class Members to submit a Request for Exclusion, Object to the
5 Settlement or Dispute work weeks was December 27, 2021.

6 11. As of this date, Simpluris has not received any Requests for Exclusion from Class
7 Members.

8 12. As of this date, Simpluris has not received any Objections to the Settlement from Class
9 Members.

10 13. As of this date, Simpluris has received one (1) Dispute regarding Subclass, (i.e. if an
11 employee belongs in the Field Technician/Inspector or Non-Field Technician/Inspector Subclass for the
12 purpose of payment allocation) from a Class Member. Simpluris promptly sent the request to Defense
13 Counsel for review, and it was resolved in favor of the employee's contention that he belongs in the Field
14 Technician/Inspector Subclass.

15 **CLASS MEMBER AWARDS**

16 14. As of this date, there are one hundred twenty-one (121) Class Members who will be paid
17 their portion of the Net Settlement Fund. Of the one hundred twenty-one (121) Class Members, one
18 hundred (100) are Field Technicians and twenty-one (21) are Non-Field Technicians.

19 15. The Net Settlement Fund of \$260,352.57 available to pay Class Members was determined
20 by subtracting the Class Counsel's Fees (\$157,500.00), Class Counsel's Litigation Costs (\$8,397.43),
21 Named Plaintiffs Service Awards (\$15,000.00), PAGA LWDA payment (\$3,750.00), and the
22 Administration Costs (\$5,000.00) from the Maximum Settlement Amount (\$450,000.00).

23 16. The *average total estimated payment* is \$2,151.67 and the *highest total estimated*
24 *payment* is \$8,462.79.

25 17. The *average Field Technician payment* is \$2,461.47 and the *highest Field Technician*
26 *payment* is \$8,434.49

27 18. The *average Non-Field Technician payment* is \$616.91 and the *highest Non-Field*
28 *Technician payment* is \$1,750.36.

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19. Simpluris' total costs for services in connection with the administration of this Settlement, including fees incurred and anticipated future costs for completion of the administration, are \$5,000.00. Simpluris' work in connection with this matter will continue with the calculation of the settlement checks, issuance and mailing of those settlement checks, etc., and to do the necessary tax reporting on such payments.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct. Executed this 15th day of January 2022, in Costa Mesa, CA.

1 Stollme

Lindsay Kline

EXHIBIT A

CALIFORNIA SUPERIOR COURT FOR THE COUNTY OF SACRAMENTO

Case No. 34-2020-00289168

Ruiz v. CTE Cal, Inc.

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

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ATTENTION: all individuals who have, or continue to, perform work for CTE Cal, Inc. in California as hourly, non-exempt employees from to November 18, 2016 to August 29, 2021 (the "Class Members").

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

Pursuant to an order from the Sacramento County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on October 13, 2021, you are receiving notice of a proposed class action settlement between Plaintiff Juan Ruiz ("Plaintiff" or "Class Representative"), and Defendant CTE Cal, Inc. ("Defendant") on behalf of Class Members as defined above. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked «MERGED_WW_CALC» workweeks during the applicable Class Period (as defined below) within the «MERGED_Subclass», which means your share of the settlement proceeds is estimated to be \$«MERGED_EstSettAmnt_CALC». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

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

I. BACKGROUND OF THE CASE

On November 18, 2020, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of Sacramento on behalf of himself and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2020-00289168. The Class Period is November 18, 2016 to August 29, 2021 (the "Class Period").

In the Action, Plaintiff sought to obtain allegedly unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendant violated California law by failing to pay overtime, failing to pay minimum wages, failing to provide meal periods, failing to provide rest periods, failing to provide accurate wage statements, failing to pay final wages, failing to reimburse expenses, failing to pay paid sick leave, untimely payment of wages, failing to pay prevailing wages, failing to maintain accurate records, and engaging in unfair competition. Plaintiff also alleged Defendant is liable for civil penalties under the Private Attorneys General Act.

Defendant has denied, and continues to deny, that it has adopted any policy or committed any act or omission giving rise to any liability under any the California wage and hour laws or any other wage and hour laws or regulations. Defendant also has denied, and continues to deny, among other things, the allegations that its employees were underpaid; that any Member of the Class has suffered any damages by reason of Defendant's employment policies; or that the Members of the Class were harmed by the conduct alleged in the Action or that could have been alleged as part of the Action.

The Action has been actively litigated. There has been an independent investigation, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

Page 1 of 4

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

Questions? Call: (888) 369-3780

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

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant agrees to pay a total sum of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$157,500, attorneys' costs not to exceed \$12,500, Claims Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$15,000, and \$5,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$5,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among PAGA Claimants, which are defined as all individuals who have, or continue to, perform work for Defendant in California as hourly, non-exempt employees from November 18, 2019 to August 29, 2021.

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

B. Claim Amounts and Allocation Between Class Members and PAGA Claimants

Defendant will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to PAGA Claimants. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to PAGA Claimants will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and PAGA Claimants will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA Payment. For purposes of allocation of the Net Settlement Amount and the waiver of claims associated with the payment, subclasses shall be established as follows: 1) Field Technician/Inspector Subclass; and 2) Non-Field Technician/Inspector Subclass. The Field Technician/Inspector Subclass shall be allocated 95% of the Net Settlement Amount and the Non-Field Technician/Inspector Subclass shall be allocated 5% of the Net Settlement Amount. This allocation is commensurate with the damages each respective Subclass was calculated to have experienced relative to each other based facts and theories of liability asserted. Each Class Member's share will be determined by dividing their total weeks worked within their Subclass during the Class Period by the total weeks worked by all individuals within their Subclass within the Class Period. That fraction will then be multiplied by the Net Settlement Amount allocated to their Subclass to arrive at the Class Member's individual share of the Net Settlement Amount. Each PAGA Claimant's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Claimants within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the PAGA Claimant's individual share. Receipt of the Claim Amounts will not entitle any Class Member or PAGA Claimant to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek/Subclass Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendant's records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or their assigned subclass. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than December 27, 2021. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

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

Class Members who do not opt out will release claims according to their Subclass. The Field Technician/Inspector Subclass shall release all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. A Civil Code Section 1542 waiver will apply to these released claims and any claims that could have been brought based on the facts alleged in the operative Complaint, whether known or unknown, in order to give full and complete effect to the waiver of these claims. The Non-Field Technician/Inspector Subclass shall release any and all claims under the Healthy Workplaces, Healthy Families Act of 2014, Cal. Lab. Code §§ 245-249, as well as any other claims that could have been alleged based on the facts relating to the sick leave claims alleged in the operative Complaint, through the Class Period. A Civil Code Section 1542 waiver will apply to these released sick leave claims and any claims that could have been brought based on the facts regarding the sick leave claims alleged in the operative Complaint, whether known or unknown, in order to give full and complete effect to the waiver of these claims. California Civil Code section 1542 specifically provides:

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.

Notwithstanding California Civil Code section 1542, Class Members who do not opt out of this settlement will waive all the released claims according to their subclass as outlined above, whether known or unknown, suspected or unsuspected. PAGA Claimants will release all Private Attorneys General Act claims for civil penalties contained in Plaintiff's letter to the LWDA and/or operative Complaint, through the PAGA Claim Period.

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

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

E. Attorneys' Fees and Costs

Defendant has agreed to pay Plaintiff's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$157,500, and attorneys' costs not to exceed \$12,500. Class Counsel's fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

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

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

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

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e.* Ruiz v. CTE Cal, Inc., 34-2020-00289168); (d) be signed; and (e) be post-marked no later than December 27, 2021. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

Ruiz v. CTE Cal, Inc.
c/o Claims Administrator
P.O. Box 26170
Santa Ana, CA 92799

The request to opt out must be postmarked no later than December 27, 2021. If you submit a request to opt out which is not postmarked by December 27, 2021, your request to opt out will be rejected, and you will be bound by the release and all other terms of

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

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. Ruiz v. CTE Cal, Inc., 34-2020-00289168) (e) be signed; and (f) be post-marked no later than December 27, 2021. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

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

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

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

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 54, 813 6th Street Sacramento, CA 95814 on February 16, 2022 at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

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

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

Sean D. Schwerdtfeger
Catherine L. Coughlin
Sara K. Richards
Schwerdtfeger & Coughlin, LLP
501 West Broadway, Suite 2040
San Diego, CA 92101
Telephone: (619) 595-3403
Facsimile: (619) 595-3404
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO (888) 369-3780.

BY ORDER OF THE COURT

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

5 Attorneys for Plaintiff JUAN RUIZ
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SACRAMENTO**

10
11 JUAN RUIZ, individually and on behalf of all
12 other similarly situated employees,

13 Plaintiff,

14 vs.

15 CTE CAL, INC., a California Corporation; and
16 DOES 1 to 100, inclusive,

17 Defendant.

Case No. 34-2020-00289168

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: February 16, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: November 18, 2020

FAC Filed: March 29, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on February 16, 2022 at 9:00 a.m., in Department 54 before
4 Hon. Christopher E. Krueger, presiding. Named Plaintiff Juan Ruiz ("Plaintiff") filed this putative
5 class action on November 18, 2020. The operative Complaint alleges that Defendant CTE Cal, Inc.,
6 ("Defendant") violated California law by failing to pay overtime, failing to pay minimum wages,
7 failing to provide meal periods, failing to provide rest periods, failing to provide accurate wage
8 statements, failing to pay final wages, failing to pay reimbursements for expenses, and engaging in
9 unfair competition. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private
10 Attorneys General Act ("PAGA") based on these violations as well as failing to provide paid sick
11 leave, untimely payment of wages, violation of Labor Code section 558, failing to pay prevailing
12 wages, and failing to maintain accurate records. Plaintiff sought attorneys' fees and costs as part of
13 this Action. Defendant denied all of Plaintiff's claims and denied that this case was appropriate for
14 class treatment. No class has been certified. The class settlement was preliminarily approved by this
15 Court on October 13, 2021.

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

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

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

28 All individuals who have, or continue to, perform work for Defendant in

1 California as hourly, non-exempt employees from to November 18, 2016
2 up to August 29, 2021.

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

6 The Court finds that Class Members meet the ascertainability and numerosity requirements since
7 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
8 the definition and the number of Class Members would make joinder impractical. The commonality and
9 predominance requirements are met for settlement purposes since there are questions of law and fact
10 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
11 contentions that Defendant caused the violations outlined above by 1) failing to pay putative class
12 members for all compensable drive time between its lab/office and job sites; 2) failing to correctly
13 calculate putative class members' regular rates of pay due to its failure to incorporate the value of all
14 remuneration paid to putative class members under its drive time policy; 3) failing to authorize and
15 permit putative class members to take all meal and rest periods; 4) failing to pay putative class members
16 all prevailing wages owed for work on public works jobs; 5) failing to pay putative class members all
17 overtime wages owed on public works jobs; 6) failing to incorporate the value of prevailing wage rates
18 into putative class members' regular rates of pay for the purpose of calculating overtime wages on non-
19 public works jobs where putative class members worked on public works and non-public works jobs in
20 the same workweek; and 7) failing to reimburse putative class members for gas, mileage, and the use of
21 their personal cellphones for work. The PAGA, waiting time penalty, wage statement violation, and
22 unfair competition claims also derive from these violations. Additionally, Class Members seek the
23 same remedies under state law. The typicality requirement for settlement purposes is also satisfied since
24 the claims of the Class Representative is based on the same facts and legal theories as those applicable to
25 the class members.

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

1 The Court finds that Plaintiff Juan Ruiz and Plaintiff's counsel, Galen T. Shimoda
2 and Justin P. Rodriguez of the Shimoda Law Corp., to be adequate representatives of the settlement
3 class. The Court appoints them as class representative and class counsel, respectively.

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

5 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
6 A. The Court finds that final approval is warranted as the Agreement falls within the range of
7 reasonableness and is fair, reasonable, and adequate for the class. The Court also acknowledges that
8 Class Members were able to object to the settlement through the administration process and at a fairness
9 hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement. No
10 such objections were made by class members and no class members opted out of the settlement.

11 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
12 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
13 grants final approval of the Agreement and all terms therein as if stated here in full, including the
14 \$450,000 Gross Settlement Amount.

15 The Court orders that Plaintiff Juan Ruiz will receive \$15,000 as a Class Representative
16 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
17 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

18 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
19 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
20 \$5,000. The difference between the actual cost of the Claims Administrator and the originally allocated
21 \$10,000 will be redistributed to Qualified Claimants on a pro-rata basis.

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

1 Thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, \$157,500, to be appropriate
2 compensation for Class Counsel. The attorneys' fees request is within the range that has been approved
3 by other Courts in similar cases and is reasonable in light of the circumstances of this case, the
4 substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the
5 recovery over the course of this case, which included potential loss at summary judgment, certification,
6 and/or trial proceedings. Additionally, the Court orders that \$8,397.43 of the settlement proceeds will
7 be paid to Class Counsel for reasonable costs incurred in this case. The difference between the actual
8 costs incurred and the originally allocated \$12,500 shall be paid to the Qualified Claimants on a pro-rata
9 basis.

10 The Court approves of the Five Thousand Dollars and No Cents (\$5,000) PAGA Payment, which
11 shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to
12 resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the
13 Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to
14 PAGA Claimants on a pro rata basis as described in the Agreement. The Court also finds that the
15 Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-
16 compliance, furthering the purpose of the Labor Code and LWDA.

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

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

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

25 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
26 Motion as Exhibit A to the Declaration of Lindsay Kline, fairly and adequately advised Class Members
27 of the terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the
28 number of workweeks worked during the Class Period, their pro rata share of the Net Settlement

Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

4. IMPLEMENTATION SCHEDULE

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

Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or PAGA Claimants, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel	Within 7 days after the Final Approval Date
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to PAGA Claimants	Within 14 days after the settlement has been funded
Last day for Qualified Members and PAGA Claimants to cash settlement checks	120 days after issuance of checks to Qualified Members and PAGA Claimants
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline
Last day for Defendant to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date

1 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
2 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
3 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
4 Agreement.

5 **IT IS SO ORDERED.**

6
7 Date: _____

By: _____
Judge of the Superior Court

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
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6 individually and on behalf of similarly situated employees

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

11 JUAN RUIZ, individually and on behalf of all
12 other similarly situated employees,

13 Plaintiff,

14 vs.

15 CTE CAL, INC., a California Corporation; and
DOES 1 to 100, inclusive,

16 Defendant.
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Case No. 34-2020-00289168

CLASS ACTION

PROOF OF SERVICE

Date: February 16, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: November 18, 2020

FAC Filed: March 29, 2021

Trial Date: None Set

Ruiz v. CTE Cal, Inc.
Sacramento Superior Court Case No. 34-2020-00289168

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

I, Erika F. Collazo, declare that:

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

On January 18, 2022, I served the following documents on the party below:

- Plaintiff's Notice of Motion and Motion for Final Approval of Class Action and PAGA Settlement
- Memorandum of Points and Authorities In Support Of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement
- Exhibit List and Exhibits In Support Of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement
- Declaration of Justin P. Rodriguez In Support Of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement
- Declaration of Lindsay Kline Regarding Notice and Settlement Administration
- [PROPOSED] Order Granting Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement

Sean D. Schwerdtfeger, Esq. (SBN 179521) Catherine L. Coughlin, Esq. (SBN 295812) Sara K. Richards, Esq. (SBN 317603) SCHWERDTFEGER & COUGHLIN, LLP 501 West Broadway, Suite 2040 San Diego, CA 92101 Telephone: (619) 595-3403 Facsimile: (619) 595-3404 sds@sdsattorneys.com clc@sdsattorneys.com	
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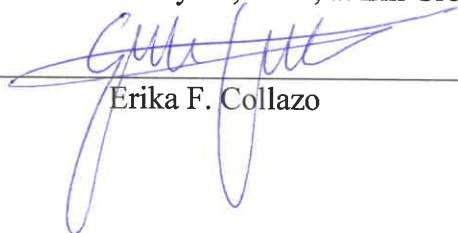
[XXX] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

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

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

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

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct, and that this declaration was executed on January 18, 2022, at Elk Grove, California.

5 
6 _____
7 Erika F. Collazo
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