

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

AVIS DAVIS, individually, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

v.

GROCERY DELIVERY E-SERVICES USA
INC., an unknown business entity; INSPIRITY
PEO SERVICES, L.P., an unknown business
entity; and DOES 1 through 100, inclusive,

Defendants.

Case No. C18-02253

PER LOCAL RULE THIS CASE IS
ASSIGNED FOR ALL PURPOSES TO
DEPT. 39, *Honorable Edward G. Weil*

**[PROPOSED] PRELIMINARY
APPROVAL AND PROVISIONAL
CLASS CERTIFICATION ORDER**

Action Filed: November 6, 2018

On _____, this Court heard Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") under California Rule of Court 3.769, filed by Plaintiff Avis Davis (the "Plaintiff"). This Court reviewed the Motion for Preliminary Approval, including the Joint Stipulation of Class Action Settlement and Release (the "Agreement," "Settlement," or "Settlement Agreement"). Based on this review, the hearing, and the findings below, the Court finds good cause to GRANT the motion.

FINDINGS:

1. Unless otherwise specified, defined terms in this Preliminary Approval and Provisional Class Certification Order have the same definition as the defined terms in the Agreement.

1 **2.** The Court hereby grants Plaintiff leave to file the [Proposed] First Amended Class
2 Action Complaint for Damages and Enforcement under the Private Attorneys General Act, Cal.
3 Labor Code § 2698, Et Seq. ("First Amended Complaint") which is attached hereto as "**Exhibit**
4 **1.**" The First Amended Complaint shall be deemed filed as of the date of the entry of this Order,
5 and shall be the operative complaint in the Action for purpose of Settlement, including the
6 release of claims. The First Amended Complaint and all allegations and causes pleaded therein
7 shall be deemed denied by Defendants, and each of them, without the necessity of Defendants
8 filing an answer to the First Amended Complaint or any other pleading in the Action. In the
9 event that the Settlement does not become final for any reason, the First Amended Complaint
10 shall be void ab initio and the Original Complaint shall be the operative complaint for all
11 purposes unless otherwise ordered by the Court.

12 **3.** The Court determines there is sufficient evidence to suggest that the Agreement
13 (including the Class Representative Enhancement Payment, Class Counsel Award, the
14 Settlement Administration Costs, and the allocation of payments to Class Members) falls within
15 the range of possible approval that could ultimately be given final approval by this Court as fair,
16 reasonable, and adequate, and that the final determination of these issues will be made at the
17 Final Approval Hearing. More specifically, the Court finds on a preliminary basis that:

18 **(a)** The Net Settlement Amount, to be disbursed to Class Members who have
19 not excluded themselves from the Class Settlement as Individual Settlement Payments, is
20 anticipated to be approximately \$284,500.00 with the allocations explained in the next sentence.
21 The Settlement provides for a Gross Settlement Amount of \$550,000.00; the Settlement further
22 provides that the Net Settlement Amount to be paid to the Class Members who do not exclude
23 themselves from the Class Settlement ("Settlement Class Members") is calculated by subtracting
24 the following from the Gross Settlement Amount: (1) Class Counsel's attorneys' fees (not to
25 exceed 35% of the Gross Settlement Amount or up to \$192,500.00); (2) Class Counsel's
26 documented costs (not to exceed \$18,000.00); (3) the Class Representative Enhancement
27 Payment to be paid to Plaintiff (not to exceed \$7,500.00); (4) the actual costs of settlement
28 administration to Simpluris, Inc. ("Simpluris") (not to exceed \$10,000.00); (5) payment to the

1 Labor Workforce and Development Agency (“LWDA”) for Private Attorneys General Act
2 (“PAGA”) penalties of \$37,500 (75% of \$50,000.00). If the Settlement is approved, the full
3 amount of the Net Settlement Amount will be paid to Settlement Class Members in accordance
4 with the terms of the Settlement Agreement.

5 (b) The Agreement is fair, adequate and reasonable as to all potential Class
6 Members when balanced against the probable outcome of further litigation relating to liability
7 and damages issues.

8 (c) Settlement at this time will avoid substantial additional costs by all parties,
9 as well as avoid the delay and risks that would be presented by the further prosecution of this
10 class action.

11 (d) The Settlement does not improperly grant preferential treatment to class
12 representatives or segments of the class, supporting a presumption of fairness.

13 (e) Adequate inquiry, investigation and discovery have been conducted so that
14 counsels for the Parties are able to reasonably evaluate their respective positions, supporting a
15 presumption of fairness.

16 (f) The Agreement has been reached as a result of intensive, serious and non-
17 collusive, arms-length negotiations, supporting a presumption of fairness.

18 4. The Court approves, both as to form and content, the Notice of Class Action and
19 Proposed Settlement (“Class Notice”), substantially in the form attached hereto as “**Exhibit 2**”,
20 and finds that distribution of the Class Notice via first class U.S. postal mail to Class Members
21 (a) constitutes the best notice practicable under the circumstances, (b) constitutes valid, due, and
22 sufficient notice to all members of the Class, and (c) complies fully with the requirements of
23 California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the
24 California and United States Constitutions, and other applicable law.

25 5. For settlement purposes only, the Court finds that the proposed Class meets the
26 requirements for certification under section 382 of the California Code of Civil Procedure in that:
27 (a) the Class is ascertainable and so numerous that joinder of all Class Members is impracticable,
28 (b) Plaintiff’s claims are typical of the Class’s claims, (c) there are questions of law and fact

1 common to the Class, which predominate over any questions affecting only individual Class
2 Members, (d) Plaintiff is an adequate representative of the Class and will fairly and adequately
3 protect the interests of the members of the Class, (e) a class action is superior to other available
4 methods for the fair and efficient adjudication of the controversy; and (f) Class Counsel is
5 qualified to act as counsel for Plaintiff in her individual capacity and as the representative of the
6 Class.

7 **6.** Pursuant to Labor Code section 2699, subdivision (l)(2), the Court notes that
8 Plaintiff provided a copy of the Agreement to the California Labor and Workforce Development
9 Agency (“LWDA”) at the same time that Plaintiff provided it to the Court, and the Court has
10 reviewed the Settlement’s provisions relating to settlement of claims under the Private Attorneys
11 General Act of 2004, Labor Code section 2698 . (“PAGA”). The Court tentatively finds
12 that the payment of \$50,000.00 for settlement of any and all claims for which civil penalties
13 under PAGA may be sought or are otherwise available (the “PAGA Penalty Payment”), is fair
14 and adequate. Further, the Court tentatively finds that the PAGA Penalty Payment satisfies the
15 requirements of Labor Code Section 2699, subdivision (i) because \$37,500 (75%) of the PAGA
16 Penalty Amount is allocated to the LWDA for the enforcement of labor laws and education of
17 employers, and \$12,500 (25%) is allocated to the Net Settlement Amount for distribution to the
18 Settlement Class Members, i.e., the allegedly “aggrieved employees.”

19 **IT IS ORDERED THAT:**

20 **1. Settlement Preliminary Approval.** The Agreement and the Class Notice are
21 preliminarily approved. The Court further preliminarily approves the formulas provided in the
22 Settlement for calculating Individual Settlement Payments to the Class Members using a
23 workweek based calculation methodology.

24 **2. Provisional Certification.** The Class is provisionally certified for settlement
25 purposes only as a class of: “All current and former non-exempt hourly employees who are or
26 were co-employed by Grocery Delivery and Insperity within the State of California, who have
27 not executed arbitration agreements with class action waivers, at any time during the Class
28 Period.” “Class Period” refers to the period of time from November 6, 2014 through date of

1 entry of this Order, or 150 calendar days from the date of execution of the Settlement
2 Agreement, whichever is sooner. Excluded from the Class are (1) Class Members who submit a
3 timely and valid Request for Exclusion (as defined by the Agreement and paragraph 9 below),
4 (2) individuals co-employed by Grocery Delivery and Insperity working as “Brand
5 Ambassadors” or in other similar positions classified as exempt under the outside sales
6 exemption, and (3) individuals who executed individual separation or severance agreements
7 containing general releases of all claims at the time of their separation from employment with
8 Defendants.

9 **3. Appointment of Class Representative and Class Counsel.** Plaintiff Avis Davis
10 is conditionally appointed as the Class Representative to implement the Parties’ Settlement in
11 accordance with the Agreement. Edwin Aiwasian and Arby Aiwasian of Lawyers *for* Justice, PC
12 are conditionally appointed as Class Counsel. Class Counsel is conditionally authorized to act on
13 behalf of the Class with respect to all acts or consents required by, or which may be given,
14 pursuant to the Settlement, and such other acts necessary to finalize the Settlement Agreement
15 and its terms. Any Class Member may enter an appearance through his or her own counsel at
16 such Class Member’s own expense. Any Class Member who does not enter an appearance or
17 appear on his or her own behalf will be represented by Class Counsel for settlement purposes
18 only. Plaintiff and Class Counsel must fairly and adequately protect the Class’s interests.

19 **4. Appointment of Settlement Administrator.** Simpluris is hereby appointed as the
20 settlement class administrator for this case.

21 **5. Provision of Class Notice.** Within fifteen (15) calendar days after entry of this
22 Order, Defendants shall provide the Class List to the Settlement Administrator. On or before
23 thirty (30) calendar days of entry of this Order, the Settlement Administrator shall mail the
24 Class Notice (which shall be substantially similar to the form attached hereto as **Exhibit 2**) to
25 all Class Members via First-Class U.S. Mail in the manner specified under Section 4 of the
26 Agreement.

27 **6. Response Deadline.** The Response Deadline shall be _____.

28 ///

1 **7. Objection to Class Settlement.** Settlement Class Members who have not
2 submitted a timely and valid Request for Exclusion pursuant to the Agreement and paragraph 9
3 below and who want to object to the Class Settlement must sign and submit by U.S. Mail or
4 other delivery service a valid written Objection to the Settlement Administrator on or before the
5 Response Deadline. The Settlement Administrator will provide copies of all such Objections to
6 Class Counsel, Grocery Delivery’s Counsel, and Insperity’s Counsel upon receipt. Class Counsel
7 will file any Objections with the Court concurrently with the motion for final approval of the
8 Settlement. For an Objection to be valid, it must: (a) state the case name and number (*Davis v.*
9 *Grocery Delivery E-Services USA Inc. et al.*, Case No. C18-02253), (b) contain the Class
10 Member’s name, current mailing address, most current telephone number, and last four digits
11 of his or her Social Security number, (c) state the basis for the objection, (d) be signed by the
12 Class Member, (e) be submitted to the Settlement Administrator at the address specified in the
13 Class Notice, and (f) be submitted with proof of the submission date (such as a U.S. Postal
14 Service postmark or another delivery service date stamp) on or before the Response Deadline.
15 The date the Objection is sent, as evidenced by the postmark or other delivery service date
16 stamp, shall be the exclusive means to determine whether an Objection has been timely
17 submitted. If the Settlement Class Member intends to speak at the Final Approval Hearing,
18 through an attorney or otherwise, the Objection should also contain the statement: “Notice of
19 Intention to Appear at Final Approval Hearing.”

20 **8. Failure to Object to Settlement.** Settlement Class Members who fail to timely
21 object to the Agreement in the manner specified above will: (1) be deemed to have waived their
22 right to object to the Agreement; and (2) be foreclosed from objecting (whether by a subsequent
23 objection, intervention, appeal, or any other process) to the Agreement.

24 **9. Requesting Exclusion.** Any Class Member wishing to opt out from the Class
25 Settlement must sign and submit by U.S. Mail or other delivery service a valid written Request
26 for Exclusion to the Settlement Administrator on or before the Response Deadline containing
27 all the information required by the Agreement. To be valid, the Request for Exclusion must: (a)
28 state the case name and number (*Davis v. Grocery Delivery E-Services USA Inc. et al.*, Case No.

1 C18-02253); (b) set forth the name, address, and telephone number of the Class Member
2 requesting exclusion; (c) be signed by the Class Member; (d) be addressed to the Settlement
3 Administrator at the specified address indicated in the Class Notice; and (e) be submitted with
4 proof of the submission date (such as a U.S. Postal Service postmark or another delivery
5 service date stamp) on or before the Response Deadline. The date the Request for Exclusion is
6 sent, as evidenced by the postmark or other delivery service date stamp, shall be the exclusive
7 means to determine whether a Request for Exclusion has been timely submitted. Class
8 Members who submit a timely and valid Request for Exclusion will not be bound by the Class
9 Settlement and will have no standing to object to the Settlement, however, they will be bound
10 by the PAGA Release.

11 **10. Workweek Dispute.** If a Class Member wishes to dispute the number of
12 Workweeks with which he or she has been credited, the Class Member must submit to the
13 Settlement Administrator, by U.S. Mail or other delivery service, a Workweek Dispute on or
14 before the Response Deadline. The submission date is deemed to be, in the case of submission
15 by U.S. Mail or other delivery service, the date the Workweek Dispute is sent, as evidenced by
16 the postmark or other delivery service date stamp.

17 **11. Termination.** If the Agreement terminates, the following will occur: (a) class
18 certification will be vacated; (b) Plaintiff will stop functioning as the Class Representative and
19 Class Counsel will stop serving as counsel for the proposed class; and (c) the Action will revert
20 to its previous status in all respects as it existed immediately before the Parties executed the
21 Agreement. This Order will not waive or otherwise impact the Parties' rights or arguments.

22 **12. No Admissions.** Nothing in this Order is, or may be construed as, an admission or
23 concession on any point of fact or law by or against any Party.

24 **13. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and
25 deadlines in the Action are stayed and suspended until further notice from the Court, except for
26 such actions as are necessary to implement the Agreement and this Order.

27 **14. Final Approval Hearing.** On _____, at
28 _____ a.m./p.m., this Court will hold a Final Approval Hearing to determine whether

1 the Agreement should be finally approved as fair, reasonable, and adequate. The Motion for
2 Final Approval and all papers supporting the Class Counsel Award and Class Representative
3 Enhancement Payment must be filed by _____.

4 **15.** The Court reserves the right to adjourn or continue the date of the Final Approval
5 Hearing and all dates provided for in the Agreement without further notice to the Class, and
6 retains jurisdiction to consider further applications concerning the Settlement.

7
8
9 DATED: _____
10
11 JUDGE OF THE SUPERIOR COURT
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

Edwin Aiwazian (SBN 232943)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

AVIS DAVIS, individually, and on behalf of
other members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

GROCERY DELIVERY E-SERVICES USA
INC., an unknown business entity;
INSPERITY PEO SERVICES, L.P., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: C18-02253

**[PROPOSED] FIRST AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES
& ENFORCEMENT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, CALIFORNIA LABOR CODE
§ 2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code § 17200, et seq.;

(11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff AVIS DAVIS (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Contra Costa. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Contra Costa.

PARTIES

5. Plaintiff AVIS DAVIS is an individual residing in the State of California, County of Contra Costa.

6. Defendant GROCERY DELIVERY E-SERVICES USA INC., at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Contra Costa.

7. Defendant INSPERITY PEO SERVICES, L.P., at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Contra Costa.

8. At all relevant times, Defendant GROCERY DELIVERY E-SERVICES USA INC. and Defendant INSPERITY PEO SERVICES, L.P. were the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

9. At all times herein relevant, Defendants GROCERY DELIVERY E-SERVICES USA INC., INSPERITY PEO SERVICES, L.P., and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

10. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and

capacities when the same have been ascertained.

11. Defendant GROCERY DELIVERY E-SERVICES USA INC., INSPERITY PEO SERVICES, L.P., and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

12. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members and aggrieved employees so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

14. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from November 6, 2014 to final judgment.

15. Plaintiff reserves the right to establish subclasses as appropriate.

16. The class is ascertainable and there is a well-defined community of interest in the litigation:

- a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.
- b. Typicality: Plaintiff’s claims are typical of all other class members’ as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

- 1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom she has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiff has no
4 interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.
- 11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.
- 14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 17. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

- 24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;
- 26 b. Whether Defendants' had a corporate policy and practice of failing to
27 pay their hourly-paid or non-exempt employees within the State of
28 California for all hours worked and missed (short, late, interrupted,

and/or missed altogether) meal periods and rest breaks in violation of California law;

- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day, over forty (40) hours per week, and/or over six (6) days per workweek and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants failed to use the commissions/non-discretionary bonuses/non-discretionary performance pay to calculate the regular rate of pay used to calculate the overtime rate for the payment of overtime wages where Plaintiff and the other class members earned shift differential pay/commissions/non-discretionary bonuses/non-discretionary performance pay and overtime wages in the same workweek;
- e. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- f. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- j. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);

///

- k. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- l. Whether Defendants' conduct was willful or reckless;
- m. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- n. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- o. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

18. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

19. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

20. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

21. Plaintiff was employed by Defendants and the alleged violations were committed against her during her time of employment and she is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

22. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the

following requirements have been met:

a. The aggrieved employee shall give written notice by online submission (hereinafter “Employee's Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

1. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employer by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

23. On November 6, 2020, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 222, 223, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2800, and 2802, have been satisfied.

GENERAL ALLEGATIONS

24. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Contra Costa.

25. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately May 2017 to approximately September 2017, in the State of California, County of Contra Costa.

26. Defendants hired Plaintiff and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed, short, late, and/or interrupted meal periods and/or rest breaks.

27. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

28. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

29. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

30. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

31. Plaintiff and the other class members worked over eight (8) hours in a day, forty (40) hours in a week, and/or over six (6) consecutive days in a workweek during their employment with Defendants.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This pattern and practice involved, *inter alia*, failing to pay them for all hours worked earned and for missed, short, late, and/or interrupted meal periods and rest breaks in violation of California law.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive certain wages for overtime compensation and that they were not receiving accurate overtime

1 compensation for all overtime hours worked.

2 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 failed to use the commissions/non-discretionary bonuses/non-discretionary performance pay to
4 calculate the regular rate of pay used to calculate the overtime rate for the payment of overtime
5 wages where Plaintiff and the other class members earned commissions/non-discretionary
6 bonuses/non-discretionary performance pay and overtime wages in the same workweek.

7 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed to provide Plaintiff and the other class members all required rest and meal periods during
9 the relevant time period as required under the Industrial Welfare Commission Wage Orders
10 and thus they are entitled to any and all applicable premium wages. Defendants' failure
11 included, *inter alia*, failing to provide uninterrupted ten (10) minute rest periods and timely,
12 uninterrupted thirty (30) minute meal periods to Plaintiff and the other class members. Plaintiff
13 and the other class members were required to perform work during meal periods and rest
14 periods.

15 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 failed to relieve Plaintiff and the other class members of all duties, failed to relinquish control
17 over Plaintiff and the other class members' activities, failed to permit Plaintiff and the other
18 class members a reasonable opportunity to take, and impeded or discouraged them from taking
19 thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work
20 for shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted
21 meal breaks no later than their tenth hour of work for shifts lasting more than ten (10) hours.

22 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Plaintiff and the other class members were entitled to receive
24 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
25 member's regular rate of pay when a meal period was missed, short, late, and/or interrupted,
26 and they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's
27 and the other class member's regular rate of pay when a meal period was missed, short, late,
28 and/or interrupted.

1 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
4 member's regular rate of pay when a rest period was missed, short, late, and/or interrupted, and
5 they did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and
6 the other class members' regular rate of pay when a rest period was missed, short, late, and/or
7 interrupted.

8 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and the other class members were entitled to receive
10 at least minimum wages for compensation and that they were not receiving at least minimum
11 wages for all hours worked.

12 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the other class members were entitled to receive
14 all wages owed to them upon discharge or resignation, including earned by unpaid overtime
15 and minimum wages and meal and rest period premiums, and they did not, in fact, receive all
16 such wages owed to them at the time of their discharge or resignation.

17 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other class members were entitled to receive
19 all wages owed to them during their employment. Plaintiff and the other class members did
20 not receive payment of all wages, including overtime and minimum wages and meal and rest
21 period premiums, within any time permissible under California Labor Code section 204.

22 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Plaintiff and the other class members were entitled to receive
24 complete and accurate wage statements in accordance with California law, but, in fact, they did
25 not receive complete and accurate wage statements from Defendants. The deficiencies
26 included, *inter alia*, the failure to include the actual number of hours worked by Plaintiff and
27 the other class members, including work to be performed off-the-clock.

28 ///

1 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Defendants had to keep complete and accurate payroll records
3 for Plaintiff and the other class members in accordance with California law, but, in fact, did
4 not keep complete and accurate payroll records.

5 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and the other class members were entitled to
7 reimbursement for necessary business-related expenses.

8 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that they had a duty to compensate Plaintiff and the other class
10 members pursuant to California law, and that Defendants had the financial ability to pay such
11 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
12 represented to Plaintiff and the other class members that they were properly denied wages, all
13 in order to increase Defendants' profits.

14 46. During the relevant time period, Defendants failed to pay overtime wages to
15 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other
16 class members did not receive compensation at one-and-one-half the regular rate of pay for all
17 hours spent performing job duties in excess of eight (8) hours per day, forty (40) hours per
18 week, and/or the first eight (8) hours worked on the seventh day of work in a workweek.

19 47. During the relevant time period, Defendants failed to use the commissions/non-
20 discretionary bonuses/non-discretionary performance pay to calculate the regular rate of pay
21 used to calculate the overtime rate for the payment of overtime wages where Plaintiff and the
22 other class members earned shift differential pay/commissions/non-discretionary bonuses/non-
23 discretionary performance pay and overtime wages in the same workweek.

24 48. During the relevant time period, Defendants failed to provide all requisite
25 uninterrupted meal and rest periods to Plaintiff and the other class members.

26 49. During the relevant time period, Defendants failed to pay Plaintiff and the other
27 class members at least minimum wages for all hours worked.

28 ///

50. During the relevant time period, Defendants failed to pay Plaintiff and the other class members all wages owed to them upon discharge or resignation.

51. During the relevant time period, Defendants failed to pay Plaintiff and the other class members all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204.

52. During the relevant time period, Defendants failed to provide complete or accurate wage statements to Plaintiff and the other class members.

53. During the relevant time period, Defendants failed to keep complete or accurate payroll records for Plaintiff and the other class members.

54. During the relevant time period, Defendants failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

55. During the relevant time period, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

56. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against GROCERY DELIVERY E-SERVICES USA INC., INSPIRITY PEO SERVICES, L.P., and DOES 1 through 100)

57. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 56, and each and every part thereof with the same force and effect as though fully set forth herein.

58. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly

1 basis.

2 59. Specifically, the applicable IWC Wage Order provides that Defendants are and
3 were required to pay Plaintiff and the other class members employed by Defendants, and
4 working more than eight (8) hours in a day, more than forty (40) hours in a week, and/or more
5 than six (6) consecutive days in a workweek, at the rate of time-and-one-half for all hours
6 worked in excess of eight (8) hours in a day and up to and including twelve (12) hours, more
7 than forty (40) hours in a week, and/or the first eight (8) hours worked on the seventh day of
8 work in a workweek.

9 60. The applicable IWC Wage Order further provides that Defendants are and were
10 required to pay Plaintiff and the other class members overtime compensation at a rate of two
11 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

12 61. California Labor Code section 510 codifies the right to overtime compensation
13 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
14 in a day, in excess of forty (40) hours in a week or for the first eight (8) hours worked on the
15 seventh day of work, and to overtime compensation at twice the regular hourly rate for hours
16 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
17 seventh day of work in a workweek.

18 62. During the relevant time period, Plaintiff and the other class members worked in
19 excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess of
20 six (6) consecutive days in a workweek.

21 63. During the relevant time period, Defendants intentionally and willfully failed to
22 pay overtime wages owed to Plaintiff and the other class members, including failing to
23 properly calculate the regular rate of pay and overtime rate of pay. Plaintiff and the other class
24 members did not receive overtime compensation at one-and-one-half times the regular rate of
25 pay for all hours spent performing job duties in excess of eight (8) hours in a day or forty (40)
26 hours in a week or for the first eight (8) hours worked on the seventh day.

27 64. Defendants' failure to pay Plaintiff and the other class members the unpaid
28 balance of overtime compensation, as required by California laws, violates the provisions of

California Labor Code sections 510 and 1198, and is therefore unlawful.

65. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

**(Against GROCERY DELIVERY E-SERVICES USA INC., INSPIRITY PEO
SERVICES, L.P., and DOES 1 through 100)**

66. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 65, and each and every part thereof with the same force and effect as though fully set forth herein.

67. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

68. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

69. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

70. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may

1 be waived by mutual consent of the employer and the employee only if the first meal period
2 was not waived.

3 71. During the relevant time period, Plaintiff and the other class members who were
4 scheduled to work for a period of time no longer than six (6) hours, and who did not waive
5 their legally-mandated meal periods by mutual consent, were required to work for periods
6 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
7 minutes and/or rest period.

8 72. During the relevant time period, Plaintiff and the other class members who were
9 scheduled to work for a period of time in excess of six (6) hours were required to work for
10 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
11 (30) minutes and/or rest period.

12 73. During the relevant time period, Plaintiff and other class members' meal periods
13 were missed, shortened, late, and/or were interrupted because Defendants required them to
14 perform and complete work duties, even when it resulted in missed, shortened, late, or
15 interrupted meal periods. Defendants interrupted Plaintiff and the other class members during
16 purported meal periods with business-related inquiries, instructions for tasks, and/or to require
17 them to return to work before a full thirty (30) minutes elapsed to complete or begin tasks.

18 74. As a result, Defendants failed to relieve Plaintiff and the other class members of
19 all duties, failed to relinquish control over Plaintiff and the other class members' activities,
20 failed to permit Plaintiffs and the other class members a reasonable opportunity to take, and
21 impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no
22 later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to
23 take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work
24 for shifts lasting more than ten (10) hours.

25 75. During the relevant time period, Defendants intentionally and willfully required
26 Plaintiff and the other class members to work during meal periods and failed to compensate
27 Plaintiff and the other class members the full meal period premium for work performed during
28 meal periods.

76. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

77. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

78. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against GROCERY DELIVERY E-SERVICES USA INC., INSPIRITY PEO SERVICES, L.P., and DOES 1 through 100)

79. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 78, and each and every part thereof with the same force and effect as though fully set forth herein.

80. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

81. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

82. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

83. During the relevant time period, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

84. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

85. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

86. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

87. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against GROCERY DELIVERY E-SERVICES USA INC., INSPIRITY PEO SERVICES, L.P., and DOES 1 through 100)

88. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 87, and each and every part thereof with the same force and effect as though fully set forth herein.

89. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

90. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1. Defendants' failure to pay minimum wages included, *inter alia*,

Defendants' effective payment of zero dollars per hour for hours Plaintiff and the other class members worked off-the-clock performing work duties.

91. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

92. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

93. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against GROCERY DELIVERY E-SERVICES USA INC., INSPIRITY PEO SERVICES, L.P., and DOES 1 through 100)

94. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 93, and each and every part thereof with the same force and effect as though fully set forth herein.

95. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

96. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ. Plaintiff and other class members were not paid at the time of their discharge wages earned and unpaid throughout their employment, including but not limited to, minimum wages for time worked off-the-clock to perform work duties and for meal and rest period premium payments.

97. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

98. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

99. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against GROCERY DELIVERY E-SERVICES USA INC., INSPIRITY PEO SERVICES, L.P., and DOES 1 through 100)

100. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 99, and each and every part thereof with the same force and effect as though fully set forth herein.

101. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was

1 performed.

2 102. At all times herein set forth, California Labor Code section 204 provides that all
3 wages earned by any person in any employment between the 16th and the last day, inclusive,
4 of any calendar month, other than those wages due upon termination of an employee, are due
5 and payable between the 1st and the 10th day of the following month.

6 103. At all times herein set forth, California Labor Code section 204 provides that all
7 wages earned for labor in excess of the normal work period shall be paid no later than the
8 payday for the next regular payroll period.

9 104. During the relevant time period, Defendants intentionally and willfully failed to
10 pay Plaintiff and the other class members all wages due to them, within any time period
11 permissible under California Labor Code section 204.

12 105. Plaintiff and the other class members are entitled to recover all remedies
13 available for violations of California Labor Code section 204.

14 **SEVENTH CAUSE OF ACTION**

15 **(Violation of California Labor Code § 226(a))**

16 **(Against GROCERY DELIVERY E-SERVICES USA INC., INSPIRITY PEO**
17 **SERVICES, L.P., and DOES 1 through 100)**

18 106. Plaintiff incorporates by reference the allegations contained in paragraphs 1
19 through 105, and each and every part thereof with the same force and effect as though fully set
20 forth herein.

21 107. At all material times set forth herein, California Labor Code section 226(a)
22 provides that every employer shall furnish each of his or her employees an accurate itemized
23 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
24 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
25 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
26 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
27 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
28 his or her social security number, (8) the name and address of the legal entity that is the

1 employer, and (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee. The deductions
3 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
4 showing the month, day, and year, and a copy of the statement or a record of the deductions
5 shall be kept on file by the employer for at least three years at the place of employment or at a
6 central location within the State of California.

7 108. Defendants have intentionally and willfully failed to provide Plaintiff and the
8 other class members with complete and accurate wage statements. The deficiencies include,
9 but are not limited to: the failure to include the total number of hours worked by Plaintiff and
10 the other class members.

11 109. As a result of Defendants' violation of California Labor Code section 226(a),
12 Plaintiff and the other class members have suffered injury and damage to their statutorily-
13 protected rights.

14 110. More specifically, Plaintiff and the other class members have been injured by
15 Defendants' intentional and willful violation of California Labor Code section 226(a) because
16 they were denied both their legal right to receive, and their protected interest in receiving,
17 accurate and itemized wage statements pursuant to California Labor Code section 226(a).
18 Because Plaintiff's and the other class members' wage statements did not reflect the accurate
19 number of hours worked, Plaintiff and the other class members were unable to determine the
20 total amount they were owed, and were unable to verify they were paid the proper amount. In
21 order to determine how much Plaintiff and the other class members should have been paid,
22 Plaintiff and the other class members would have had to engage in discovery and mathematical
23 computations in order to reconstruct the missing information.

24 111. Plaintiff and the other class members are entitled to recover from Defendants the
25 greater of their actual damages caused by Defendants' failure to comply with California Labor
26 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
27 employee.

28 112. Plaintiff and the other class members are also entitled to injunctive relief to

1 ensure compliance with this section, pursuant to California Labor Code section 226(h).

2 **EIGHTH CAUSE OF ACTION**

3 **(Violation of California Labor Code § 1174(d))**

4 **(Against GROCERY DELIVERY E-SERVICES USA INC., INSPERITY PEO**
5 **SERVICES, L.P., and DOES 1 through 100)**

6 113. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 112, and each and every part thereof with the same force and effect as though fully set
8 forth herein.

9 114. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
10 central location in the state or at the plants or establishments at which employees are
11 employed, payroll records showing the hours worked daily by and the wages paid to, and the
12 number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments. These records shall be kept in accordance
14 with rules established for this purpose by the commission, but in any case shall be kept on file
15 for not less than two years.

16 115. Defendants have intentionally and willfully failed to keep accurate and complete
17 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other
18 class members.

19 116. As a result of Defendants' violation of California Labor Code section 1174(d),
20 Plaintiff and the other class members have suffered injury and damage to their statutorily-
21 protected rights.

22 117. More specifically, Plaintiff and the other class members have been injured by
23 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
24 they were denied both their legal right and protected interest, in having available, accurate and
25 complete payroll records pursuant to California Labor Code section 1174(d).

26 ///

27 ///

28 ///

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

**(Against GROCERY DELIVERY E-SERVICES USA INC., INSPERITY PEO
SERVICES, L.P., and DOES 1 through 100)**

118. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 117, and each and every part thereof with the same force and effect as though fully set forth herein.

119. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

120. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants.

121. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

122. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

**(Against GROCERY DELIVERY E-SERVICES USA INC., INSPERITY PEO
SERVICES, L.P., and DOES 1 through 100)**

123. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 122, and each and every part thereof with the same force and effect as though fully set forth herein.

124. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'

competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

125. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

126. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

127. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

128. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

129. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years preceding the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

///

ELEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, et seq.)

**(Against GROCERY DELIVERY E-SERVICES USA INC., INSPERITY PEO
SERVICES, L.P., and DOES 1 through 100)**

130. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 129, and each and every part thereof with the same force and effect as though fully set forth herein.

131. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

132. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

133. Plaintiff and the other hourly-paid or non-exempt employees, are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

134. Defendants’ failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failing to Provide Meal Periods

135. Defendants’ failure to provide legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226.7

1 and 512(a).

2 **Failure to Provide Rest Periods**

3 136. Defendants' failure to provide legally required rest periods in violation of the
4 Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful
5 and/or unfair activity prohibited by California Labor Code section 226.7.

6 **Failure to Pay Minimum Wages**

7 137. Defendants' failure to pay minimum wages in violation of the Wage Orders and
8 California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful
9 and/or unfair activity prohibited by California Labor Code sections 1194, 1197, and 1197.1.

10 **Failure to Timely Pay Wages Upon Termination**

11 138. Defendants' failure to timely pay wages upon termination in violation of
12 California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or
13 unfair activity prohibited by California Labor Code sections 201 and 202.

14 **Failure to Timely Pay Wages During Employment**

15 139. Defendants' failure to timely pay wages during employment in violation of
16 California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair
17 activity prohibited by California Labor Code section 204.

18 **Failure to Provide Compliant Wage Statements**

19 140. Defendants' failure to provide compliant wage statements in violation of
20 California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair
21 activity prohibited by California Labor Code section 226(a).

22 **Failure to Keep Complete or Accurate Payroll Records**

23 141. Defendants' failure to keep complete or accurate payroll records in violation of
24 California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair
25 activity prohibited by California Labor Code section 1174(d).

26 **Failure to Reimburse Necessary Business Expenses**

27 142. Defendants' failure to reimburse all necessary business-related expenses and
28 costs in violation of California Labor Code sections 2800 and 2802, as alleged above,

1 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800
2 and 2802.

3 143. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
4 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and
5 each of them, business expenses, unpaid wages, and/or untimely wages according to proof,
6 interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as
7 all penalties against Defendants, and each of them, including but not limited to:

- 8 b. Penalties under California Labor Code section 2699 in the amount of a
9 hundred dollars (\$100) for each aggrieved employee per pay period for the
10 initial violation, and two hundred dollars (\$200) for each aggrieved
11 employee per pay period for each subsequent violation;
- 12 c. Penalties under California Code of Regulations Title 8 section 11010, *et*
13 *seq.* in the amount of fifty dollars (\$50) for each aggrieved employee per
14 pay period for the initial violation, and one hundred dollars (\$100) for
15 each aggrieved employee per pay period for each subsequent violation;
- 16 d. Penalties under California Labor Code section 210 in addition to, and
17 entirely independent and apart from, any other penalty provided in the
18 California Labor Code in the amount of a hundred dollars (\$100) for each
19 aggrieved employee per pay period for the initial violation, and two
20 hundred dollars (\$200) for each aggrieved employee per pay period for
21 each subsequent violation; and
- 22 e. Any and all additional penalties and sums as provided by the California
23 Labor Code and/or other statutes.

24 144. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
25 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor
26 and Workforce Development Agency for the enforcement of labor laws and education of
27 employers and employees about their rights and responsibilities and twenty-five percent (25%)
28 to the aggrieved employees.

1 145. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
2 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable
3 statute.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, individually, and on behalf of other members of the general public similarly
6 situated, and on behalf of other aggrieved employees pursuant to the California Private
7 Attorneys General Act, requests a trial by jury.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general
10 public similarly situated, and on behalf of other aggrieved employees pursuant to the
11 California Private Attorneys General Act, prays for relief and judgment against Defendants,
12 jointly and severally, as follows:

13 **Class Certification**

- 14 1. That this action be certified as a class action with respect to the first ten causes
15 of action;
- 16 2. That Plaintiff be appointed as the representative of the Class;
- 17 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 18 4. That Defendants provide to Class Counsel immediately the names and most
19 current/last known contact information (address, e-mail and telephone numbers) of all class
20 members.

21 **As to the First Cause of Action**

- 22 5. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
24 all overtime wages due to Plaintiff and the other class members;
- 25 6. For general unpaid wages at overtime wage rates and such general and special
26 damages as may be appropriate;
- 27 7. For pre-judgment interest on any unpaid overtime compensation commencing
28 from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

///

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

38. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);

42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

43. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiff and the other class members as required by California Labor Code section 1174(d);

45. For actual, consequential and incidental losses and damages, according to proof;

46. For statutory penalties pursuant to California Labor Code section 1174.5; and

47. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

49. For actual, consequential and incidental losses and damages, according to proof;

50. For the imposition of civil penalties and/or statutory penalties;

51. For reasonable attorneys' fees and costs of suit incurred herein; and

52. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

53. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

54. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

55. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, et seq.;

56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

///

1 57. For injunctive relief to ensure compliance with this section, pursuant to
2 California Business and Professions Code sections 17200, et seq.; and

3 58. For such other and further relief as the Court may deem just and proper.

4 **As to the Eleventh Cause of Action**

5 59. For civil penalties and wages pursuant to California Labor Code sections
6 2699(a), (f), and (g) plus costs and attorneys' fees for violation of California Labor Code
7 sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 222, 223, 226, 226.7, 510, 512, 551,
8 552, 1174, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2800, and 2802; and

9 60. For such other and further relief as the Court may deem equitable and
10 appropriate.

11
12 Dated: January 19, 2021

LAWYERS for JUSTICE, PC

13
14 By: 

15 Edwin Aiwazian
16 *Attorneys for Plaintiff*

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

AVIS DAVIS,

v.

GROCERY DELIVERY E-SERVICES USA INC.,
ET AL.,

Case No. C18-02253

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

TO: All current and former non-exempt hourly employees who are or were co-employed by Defendants Grocery Delivery E-Services USA Inc. and Insperity PEO Service L.P. (“Defendants”) within the State of California, who have not executed arbitration agreements with class action waivers, at any time between November 6, 2014 through **[INSERT DATE]**.

IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT
WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.

A settlement (“Settlement”) has been proposed by Plaintiff Avis Davis (“Plaintiff”) and Defendants in a class action lawsuit pending in Contra Costa County Superior Court (“Court”) titled *Avis Davis v. Grocery Delivery E-Services USA Inc. and Insperity PEO Service L.P.*, Case No. C18-02253 (the “Action”). If the Court gives final approval to the Settlement, Defendants will provide each Class Member who does not opt out of the Settlement a payment as set forth in this notice.

Here is a summary of your rights and options; they are described in more detail later in this document. If you have any questions, please contact the Davis-Grocery Delivery Settlement Administration, c/o **[REDACTED]**.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

GET A PAYMENT	If you do nothing, you will automatically receive a payment if the Court grants final approval of the Settlement.	
SUBMIT A WORKWEEK DISPUTE	If you believe that the number of Workweeks with which you have been credited is incorrect, you must submit a Workweek Dispute to the Settlement Administrator. Detailed instructions for this option are set forth in Section 10 below.	Deadline: _____
EXCLUDE YOURSELF	If you wish to exclude yourself from the Class Settlement (which is the settlement and resolution of Released Claims except the PAGA Release as these terms are defined below in Section 9), you must submit to the Settlement Administrator a valid Request for Exclusion. If you exclude yourself from the Settlement, you will not receive a payment under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Defendants regarding the allegations in the Action. Detailed instructions for this option are set forth in Section 17 below.	Deadline: _____
OBJECT	If you wish to object to the Class Settlement, you must submit your objections to the Settlement Administrator. Submitting an objection does not exclude you from the Class Settlement. Detailed instructions for this option are set forth in Section 18 below.	Deadline: _____
APPEAR AT THE “FINAL APPROVAL HEARING”	The Court will hold a “Final Approval Hearing” to consider the Settlement, the request for attorneys’ fees and costs by the attorneys representing the Class in the Action, and the Plaintiff’s request for an enhancement payment for bringing the Action. You may, but are not required to, speak at the Final Approval Hearing about any objection to the Class Settlement that you submitted. If you intend to speak at the Final Approval Hearing, you must also provide a “Notice of Intention to Appear” indicating your intent to do so.	Hearing Date: _____ at _____ AM

Questions? Call (***) ***-****

[INSERT PAGE NUMBER]

The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

BACKGROUND INFORMATION

1. Why did I get this notice?

You received this Notice because a settlement has been reached in this Action. According to Defendants' available records you are a member of the Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines capitalized terms used in this Notice), see Section 24 below.

2. What is this lawsuit about?

Plaintiff Avis Davis filed a lawsuit against Defendants on behalf of herself and all others similarly situated. The lawsuit alleges that Defendants violated California law by, among other things, failing to pay overtime and minimum wage, failing to provide meal and rest breaks, failing to timely pay wages, failing to provide expense reimbursement, and failing to provide compliant wage statements. The lawsuit also asserts claims under the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA Claims").

Defendants deny each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. Defendants further deny that any Class Member is entitled to any relief and, other than for settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of the Plaintiff's claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 24 below.

3. Why is this a class action?

In a class action lawsuit, one or more people called "Plaintiff" (in this Action, Avis Davis) sues on behalf of others who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The companies sued in this case, Grocery Delivery E-Services USA Inc. and Insperity PEO Services, L.P., are called the Defendants.

4. Why is there a Settlement?

Plaintiff has made claims against Defendants. Defendants deny that they have done anything wrong or illegal and admit no liability. **The Court has not decided that Plaintiff or Defendants should win this Action. Instead, both sides agreed to a Settlement.** That way, they avoid the cost of a trial, and the Class Members will receive payment now rather than years from now, if at all.

5. How do I know if I am part of the Settlement?

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement: "All current and former non-exempt hourly employees who are or were co-employed by Grocery Delivery and Insperity within the State of California, who have not executed arbitration agreements with class action waivers, at any time during the Class Period." "Class Period" refers to the period of time from November 6, 2014 through [INSERT DATE]. Excluded from the Class are (1) individuals co-employed by Grocery Delivery and Insperity working as "Brand Ambassadors" or in other similar positions classified as exempt under the outside sales exemption, and (2) individuals who executed individual separation or severance agreements containing general releases of all claims at the time of their separation from employment with Grocery Delivery.

6. I'm still not sure if I am included.

If you are still not sure whether you are included, you can contact the Settlement Administrator for help at [INSERT TELEPHONE NUMBER]. The address of the Settlement Administrator is: Davis-Grocery Delivery Settlement Administration, c/o [REDACTED].

Questions? Call (***) ***-****

[INSERT PAGE NUMBER]

THE PROPOSED SETTLEMENT

7. What relief does the Settlement provide to the Class Members?

Defendants have agreed to fund a settlement with a maximum value of \$550,000 ("Gross Settlement Amount"). The Gross Settlement Amount will be used to make the following payments: Individual Settlement Payments to Class Members who do not opt out of the Class Settlement ("Settlement Class Members") and associated taxes, the cost of providing notice to the Class and administering the Settlement (up to \$10,000) to the Settlement Administrator ("Settlement Administration Costs"); Court-approved attorneys' fees of up to 35% of the Gross Settlement Amount (i.e., \$192,500) and reimbursement of litigation costs and expenses (up to \$18,000) (together, "Class Counsel Award") to Plaintiff's counsel ("Class Counsel"); Court-approved service award to Plaintiff (up to \$7,500) in recognition of her work in prosecuting the Action ("Class Representative Enhancement Payment"); and the LWDA Payment in the amount of \$37,500, representing 75% of the total \$50,000 PAGA Penalty Payment, which will be paid to the California Labor and Workforce Development Agency ("LWDA").

Your Estimated Individual Settlement Payment is included with this notice. Your estimated payment was calculated using Defendants' payroll and employee records. Individual Settlement Payments will be calculated and apportioned as follows:

(a) The "Net Settlement Amount" will be calculated by subtracting the Court-approved Class Counsel Award, Class Representative Enhancement Payment, Settlement Administration Costs, and LWDA Payment, from the Gross Settlement Amount.

(b) For each Settlement Class Member (i.e., Class Members who do not request to be excluded from the Class Settlement), the Settlement Administrator will determine the number of weeks in which work was performed as a non-exempt hourly employee during the Class Period ("Workweeks"). The sum of the Workweeks of all Settlement Class Members is the "Total Workweeks."

(c) The Net Settlement Amount will be divided by the number of Total Workweeks; the resulting figure is the "Workweek Point Value."

(d) The Settlement Administrator will multiply each Settlement Class Member's individual number of Workweeks by the Workweek Point Value. The resulting figure shall be the "Gross Allocated Amount" for each such Settlement Class Member.

(e) The Gross Allocated Amount will be allocated as one-quarter (1/4) wages, subject to applicable employee's share of taxes and withholdings, and three-quarters (3/4) interest and penalties. The employer's share of payroll taxes on the wages portion of the Gross Allocated Amount will be paid separately by Defendants in addition to the Gross Settlement Amount. The net amount paid to Settlement Class Members after withholding their employee share of taxes on the wage portion is their Individual Settlement Payment.

(f) For the amount paid to a Settlement Class Member as wages, as set forth in his or her Forms W-4 and DE-4, the Settlement Administrator will withhold the funds necessary to pay state and federal taxes and for any other applicable payroll tax deductions owed by the Settlement Class Member.

PAYMENT TO THE CLASS

8. What are my Workweeks and estimated payment?

According to Defendants' records:

From November 6, 2014 to [INSERT DATE], you performed worked for Defendant as a non-exempt hourly employee in California for approximately [] Workweeks.

As explained above, your estimated Gross Allocated Amount is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Gross Allocated Amount is estimated to be approximately \$[]. The Gross Allocated Amount is subject to reduction for the employee's share of taxes and withholding with respect to the wages portion and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The Gross Allocated Amount reflected in this Notice is only an estimate. The actual amount for your Individual Settlement Payment may be higher or lower.

9. How can I get a payment?

If you wish to remain a Settlement Class Member and obtain any share of the Settlement that you may be entitled to receive, then you do not have to do anything and you will automatically receive an Individual Settlement

Questions? Call (***) ***-****

[INSERT PAGE NUMBER]

Payment in the mail if the Court approves the proposed Settlement. You are not required to go to court or pay anything to the lawyers in this case. The Individual Settlement Payment you will receive will be a full and final settlement of your Released Claims described below.

10. When will I get a payment?

As described in Sections 21 and 21, the Court will hold a hearing on _____ at ____ AM, to decide whether to grant final approval of the Settlement. If the Court approves the Settlement, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. *Please be patient.*

11. What if I disagree with the Workweeks credited to me and my estimated settlement payment?

If you believe that the number of Workweeks with which you have been credited is incorrect, you may submit a letter to the Settlement Administrator that is postmarked by _____ showing that such information is inaccurate ("Workweek Dispute"). The Workweek Dispute must: (a) state the case name and number of the Action (*Davis v. Grocery Delivery E-Services USA Inc., et al.*, Case No. C18-02253); (b) state your name, address, and telephone number; (c) be signed by you; and (d) include any documentary evidence showing that the Workweek information is inaccurate. The Settlement Administrator will decide the dispute. Defendants' records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by you and will make the final decision as to the merits of the dispute. You can submit a Workweek Dispute by mail to the Settlement Administrator at: Davis-Grocery Delivery Settlement Administration, c/o [_____].

12. If I receive a settlement payment will I have to pay taxes on it?

One-quarter (25%) of your Gross Allocated Amount will be considered to be wages and will be reported on IRS Form W-2, and/or the California state equivalent with all appropriate taxes withheld; three-quarters of your Gross Allocated Amount (for interest and penalties) will be reported on IRS Form 1099. You should consult a tax professional for more information about your own specific situation.

13. No retaliation or discrimination.

Defendants respect your right to participate in this lawsuit and will take no adverse action against you should you accept payment under the Settlement.

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFF

14. Do I have a lawyer in this case?

The Court has ordered that the law firm of Lawyers for Justice, PC ("Class Counsel") will represent the interests of all Class Members. You will not be separately charged for these lawyers. If you have a question about the settlement, you may contact the Class Counsel by writing them at 410 West Arden Avenue, Suite 203, Glendale, California 91203 or calling them at (818) 265-1020. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers be paid?

Defendant has agreed to pay Class Counsel's attorneys' fees up to 35% of the Gross Settlement Amount, or \$192,500, and costs and expenses of up to \$18,000 for their services in litigating the Action, subject to approval by the Court. You will not be required to pay any attorneys' fees or costs.

16. Will the Plaintiff receive any compensation for her efforts in bringing this Action?

Plaintiff will request a Class Representative Enhancement Payment (also known as an "incentive" award) of up to \$7,500 for her service as class representative and her effort in bringing the Action. The Court will make the final decision as to the amount to be paid to the class representative.

RELEASE OF ALL CLAIMS

17. What am I giving up to obtain relief under the Settlement?

If the Court approves the proposed Settlement, unless you exclude yourself from the Class Settlement, upon the Effective Date, you will be deemed to have fully, finally and forever released and discharged the Released Claims against the Released Parties.

"Released Claims" means any manner of action, cause of action, claim, demand, right, suit, obligation, debt, contract, agreement, promise, liability, or remedy of any nature whatsoever (including without limitation

Questions? Call (***) ***-****

[INSERT PAGE NUMBER]

any damages, charges, penalties, losses, costs, expenses, and attorney's fees), whether in law or in equity, under contract, tort or any other subject area, or under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds whatsoever, including without limitation any and all alleged violations of the California Labor Code and the California Business & Professions Code provisions alleged in the Complaint, that were pled or that could have been pled, and claims sought or that could have been sought, based on conduct, communications, acts or omissions occurring during the Class Period or arising out of the factual allegations of the Complaint, whether foreseen or unforeseen, fixed or contingent. The Released Claims do not include claims under the federal Fair Credit Reporting Act, 15 U.S.C. §1681.

"Released Parties" means Grocery Delivery and Insperity and any of their respective current and former directors, officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefit plans, representatives, partners, accountants, servants, employees, attorneys, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint venturers, predecessors, related entities, and assigns, and all other individuals and entities acting by, through, under and/or in concert with them, or any of them.

Upon the Effective Date, all Class Members on behalf of themselves and the States of California waive, release, forever discharge the Released Parties from any kind of claim or action for civil penalties under PAGA (the Private Attorneys General Act, Labor Code section 2698, *et seq.*) during the Class Period, based on or arising out of the factual allegations of the Complaint including, but not limited to, any claims under California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 222, 223, 226, 226.7, 510, 551, 552, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802 ("PAGA Release").

HOW TO EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT

18. How do I exclude myself from the Class Settlement?

You may exclude yourself from the Class Settlement. If you want to be excluded, you must send a letter or postcard (also known as a "Request for Exclusion") to the Settlement Administrator by mail that: **(a)** states the case name and number of the Action (*Davis v. Grocery Delivery E-Services USA Inc. et al.*, Case No. C18-02253); **(b)** states your full name, address, and telephone number; **(c)** is signed by you; **(d)** contains a clear statement that you do not wish to participate in the Class Settlement; **(e)** is postmarked on or before [REDACTED]. You must sign the letter or postcard for it to be valid. The letter or postcard must be sent (i.e., postmarked or delivery date stamped) no later than [REDACTED] and sent to the Settlement Administrator at: Davis-Grocery Delivery Settlement Administration, c/o [REDACTED].

If you timely request exclusion from the Class Settlement, you will not be bound by the judgment entered in the Action, and you will not be precluded from prosecuting any timely, individual claim against the Released Parties with respect to the Released Claims. Even if you request exclusion from the Class Settlement, however, you will still be bound by the PAGA Release upon final approval of the Settlement Agreement and judgment. Requests for Exclusion do not apply to the PAGA Release.

HOW TO OBJECT TO THE CLASS SETTLEMENT

19. How do I tell the Court that I do not like the Settlement?

At the date, time, and location stated in Section 22 below, the Court will hold a Final Approval Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Class Counsel's request for Class Counsel Award to Class Counsel, and Class Representative Enhancement Payment to Plaintiff.

If you wish to object to the fairness, reasonableness, or adequacy of the Class Settlement, you must submit via U.S. Mail or other delivery service a valid, written Objection to the Settlement Administrator at the address set forth below by no later than (i.e., postmarked or delivery date stamped by) _____.

SETTLEMENT ADMINISTRATOR

Simpluris

[REDACTED]

Questions? Call (***) ***-****

[INSERT PAGE NUMBER]

To be valid, any objections must: **(a)** state the name and case number of the Action (*Davis v. Grocery Delivery E-Services USA Inc., et al.*, Case No. C18-02253); **(b)** state your full name, current mailing address, most current telephone number, and last four digits of your Social Security number; **(c)** state the basis for your objection to the Settlement; **(d)** be signed by you; **(e)** be submitted to the Settlement Administrator via U.S. Mail or other delivery service with proof of submission date (such as a U.S. Postal Service postmark or another delivery service date stamp) no later than [REDACTED]. You must sign the objection for it to be valid. You may, but need not, submit your objection through counsel of your choice. If you make your objection through counsel, you will be responsible for your attorney's fees and costs.

If you wish to appear at the Final Approval Hearing to object to the Class Settlement, either in person or through personal counsel hired at your expense, then you must include in your Objection the statement, "Notice of Intention to Appear at Final Approval Hearing". Doing so, however, does not obligate you to appear.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.

20. What is the difference between excluding myself and objecting to the Class Settlement?

Objecting is telling the Court that you don't like something about the Class Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Class Settlement. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

FINAL APPROVAL HEARING

21. What is the Final Approval Hearing?

The Court has preliminarily approved the Settlement meaning only that it concluded that there is sufficient evidence to suggest that the Settlement falls within the range of possible approval as fair, reasonable, and adequate, and that the final determination of these issues will be made at the Final Approval Hearing. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class; to consider the Class Counsel Award to Class Counsel; and to consider the request for Class Representative Enhancement Payment to Plaintiff.

22. When and where is the Final Approval Hearing?

On _____ at _____ AM, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Edward G. Weil in Department 39 of the California Superior Court, for the County of Contra Costa, located at the Wakefield Taylor Courthouse, 725 Court Street, Martinez, CA 94553. The hearing may be postponed to a different date or time or location without notice.

23. May I speak at the hearing?

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to.

ADDITIONAL INFORMATION

24. How do I get more information?

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, and the operative Complaint filed in the Action, please contact the Settlement Administrator at (***)***-**** or the postal mailing address: Davis-Grocery Delivery Settlement Administration, c/o [REDACTED].

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you may visit the Clerk's office at the Wakefield Taylor Courthouse, 725 Court Street, Martinez, CA 94553, to obtain the file for inspection and copying at your own expense. Some documents are also available online for a fee at: <http://icms.cc-courts.org/tellme/>

25. What if my address or other information has changed?

It is your responsibility to inform the Settlement Administrator of your updated information. You may make corrections to your address by contacting the Settlement Administrator at (***)***-**** or Davis-Grocery Delivery Settlement Administration, c/o [REDACTED].

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

Questions? Call (***) ***-****

[INSERT PAGE NUMBER]