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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;

Plaintiff,

v.

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.: CIVMSC18-02253

Honorable Edward G. Weil
Department 39

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Plaintiff's Motion for Preliminary Approval of
Class Action Settlement; Declaration of
Proposed Class Representative (Avis Davis);
and [Proposed] Order filed concurrently
herewith.]

Date: TBD
Time: TBD
Department: 39

Complaint Filed: November 6, 2018
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers for Justice, PC, attorneys of record for Plaintiff Avis Davis. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles County Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

LITIGATION AND CLASS ACTION EXPERIENCE

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

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1 5. At *Girardi & Keese*, my practice focused on class actions and other complex cases
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases
3 involving insurance bad faith, premises liability, and medical negligence. While employed by
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has almost
7 exclusively focused on the prosecution of consumer and employment class actions, involving
8 wage-and-hour claims, race discrimination, unfair business practices or consumer fraud.
9 Currently, we are the attorneys of record in over a dozen employment-related putative class actions
10 in both state and federal courts in the State of California. Our firm has successfully litigated cases
11 involving the executive, administrative, and other overtime exemptions to the State of California
12 and federal overtime compensation requirements. During this relatively short time, in association
13 with other law firms, we have recovered millions of dollars on behalf of thousands of individuals
14 in California.

15 EXAMPLES OF CLASS ACTION RESULTS

16 7. What follows are just a few examples of the type of results we have achieved on
17 behalf of our clients:

18 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
19 and-hour class and representative action against a major property management company involving
20 allegations of misclassification of various "manager" positions. On September 20, 2010, the court
21 granted final approval of the class and representative action settlement. The Los Angeles County
22 Superior Court Case Number is BC400414.

23 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class action against a national retailer involving allegations of misclassification of the
25 "Assistant Store Manager" position. On October 28, 2010, the court granted final approval of the
26 class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

27 c) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
28 and-hour class and representative action against a national property management company

1 involving allegations of misclassification of the "Property Manager" position. On May 23, 2012,
2 the court granted final approval of the class and representative action settlement. The Los Angeles
3 County Superior Court Case Number is BC430918.

4 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
5 and-hour class action against a national retailer involving allegations of misclassification of the
6 "Store Manager" position. On June 10, 2011, the court granted plaintiffs' motion for class
7 certification. On August 26, 2013, the court granted final approval of the class action settlement.
8 The Los Angeles County Superior Court Case Number is BC424012.

9 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
10 and-hour class and representative action against a bank, involving allegations of misclassification
11 of the "Assistant Branch Manager" position. On August 27, 2013, the court granted final approval
12 of the class and representative action settlement. The Kern County Superior Court Case Number
13 is S-1500-CV-273194-LHB.

14 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
15 and-hour class and representative action against a national wholesale distributor of plumbing and
16 builder supplies, involving allegations of misclassification of multiple salaried "manager"
17 positions. On May 22, 2014, the court granted final approval of the class and representative action
18 settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

19 g) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
20 and-hour class action involving allegations of misclassification of the "Operations Manager"
21 position. On September 16, 2014, the court granted plaintiffs' motion for class certification. The
22 Los Angeles County Superior Court Case Number is BC478769.

23 h) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class and representative action against a national retailer of household items, on behalf
25 of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of
26 the class and representative action settlement. The San Francisco County Superior Court Case
27 Number is CGC-13-532344.

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i) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action involving allegations of misclassification of the salaried residential “Property Manager” position. On September 17, 2015, the court granted plaintiffs’ motion for class certification. The Los Angeles County Superior Court Case Number is BC474784.

j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a national retailer of upscale hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final approval of the class and representative action settlement. The Los Angeles County Superior Court Case Number is JCCP4794.

k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a national retailer of apparel and fashion accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final approval of the class and representative action settlement. The Los Angeles County Superior Court Case Number is BC488069.

l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action against a national retailer of apparel, accessories, and home products, involving allegations of misclassification of the “Department Manager” position. On August 12, 2016, the court granted the plaintiffs’ motion for class certification in part and certified a class. The Alameda County Superior Court Case Number is RG13680477.

m) Our firm represented the plaintiffs in a representative action under the Private Attorneys General Act, against a real estate and property management company, on behalf of non-exempt employees. On November 4, 2016, the court granted approval of the settlement. The Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action against a full-service bank, on behalf of non-exempt employees. On November 18, 2016, the court granted final approval of the class action settlement. The San Francisco County Superior Court Case Number is CJC-13-004839.

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1 o) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a consumer packaging company, on behalf of non-
3 exempt employees. On March 10, 2017, the court granted final approval of the class and
4 representative action settlement. The Los Angeles County Superior Court Case Number is
5 BC590429.

6 p) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class and representative action against a manufacturer of food service industry supplies
8 on behalf of non-exempt employees. On April 14, 2017, the court granted final approval of the
9 class and representative action settlement. The Orange County Superior Court Case Number is 30-
10 2015-00810013-CU-OE-CXC.

11 q) Our firm represented the plaintiffs in a wage-and-hour class and
12 representative action against a food company on behalf of non-exempt employees. On June 30,
13 2017, the court granted final approval of the class action settlement. The Sacramento County
14 Superior Court Case Number is 34-2015-00175871.

15 r) Our firm represented the plaintiffs in a wage-and-hour class and
16 representative action against a chocolate company on behalf of non-exempt employees. On July
17 19, 2017, the court granted final approval of the class and representative action settlement. The
18 Alameda County Superior Court Case Number is RG15764300.

19 s) Our firm represented the plaintiffs in a wage-and-hour class and
20 representative action against a manufacturer of plastic containers on behalf of non-exempt
21 employees. On October 31, 2017, the court granted final approval of the class and representative
22 action settlement. The Los Angeles County Superior Court Case Number is BC577233.

23 t) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class and representative action against a bank on behalf of non-exempt employees. On
25 December 11, 2017, the court entered an order granting final approval of class and representative
26 action settlement. The Los Angeles County Superior Court Case Number is BC569646.

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1 u) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a property management company on behalf of
3 hourly-paid and non-exempt employees. On January 4, 2018, the court entered an order granting
4 final approval of the class and representative action settlement. The Los Angeles County Superior
5 Court Case Number is JCCP4819.

6 v) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class and representative action against a global provider of flexible office space
8 solutions. On February 15, 2018, the court entered an order granting final approval of the class
9 and representative action settlement. The Los Angeles County Superior Court Case Number is
10 BC498401.

11 w) Our firm represented the plaintiffs in a wage-and-hour class and
12 representative action against a behavioral health service provider on behalf of non-exempt
13 employees. On November 13, 2018, the court granted final approval of the class and
14 representative action settlement. The Alameda County Superior Court Case Number is
15 RG16811450.

16 x) Our firm, in association with co-counsel, represented the plaintiff in a
17 representative action under the Private Attorneys General Act, against a global provider of
18 products and services to the energy industry, on behalf of hourly-paid and non-exempt employees.
19 On November 19, 2018, the Court granted approval of the settlement. The Kern County Superior
20 Court Case Number is S-1500-CV-280215-SDC.

21 y) Our firm represented the plaintiff in a wage-and-hour class action against a
22 parking company on behalf of non-exempt employees. On September 3, 2019, the court granted
23 the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior
24 Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is
25 JCCP 4886.

26 z) Our firm, in association with co-counsel, on behalf of the plaintiff and
27 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
28 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a

1 notable decision from the California Supreme Court clarifying the law and finding, in part, that
2 employer arbitration agreements are unenforceable where they block a PAGA claim from
3 proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th175 (2019).

4 aa) Our firm represents the plaintiffs in a wage-and-hour class and representative
5 action against a bank on behalf of non-exempt employees. On September 27, 2019, the court
6 granted the plaintiffs' motion for class certification in part and certified a class. The Alameda
7 County Superior Court Case Number is RG15757606 and the Judicial Council Coordination
8 Proceeding Number is JCCP 4921.

9 bb) Our firm represented the plaintiffs in a wage-and-hour class and
10 representative action against a national retailer of apparel and fashion accessories, on behalf of
11 non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class
12 certification in part and certified a class. The Sacramento County Superior Court Case Number is
13 34-2015-00175330-CU-OE-GDS.

14 cc) Our firm represented the plaintiff in a wage-and-hour class and PAGA
15 representative action against a medical equipment supplier on behalf of non-exempt employees.
16 On February 13, 2020, the court granted the plaintiff's motion for class certification and certified
17 a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

18 dd) Our firm, in association with co-counsel, represented the plaintiff in a wage-
19 and-hour class and PAGA representative action against a large national drug testing laboratory on
20 behalf of non-exempt employees. On February 21, 2020, the court granted the plaintiff's motion
21 for class certification and certified a class. The San Diego County Superior Court Case Number
22 is 37-2018-00019611-CU-OE-CTL.

23 ee) Our firm represented the plaintiffs in a wage-and-hour class and
24 representative action against a national retailer of sportswear, footwear, and camping equipment
25 on behalf of non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's
26 motion for class certification and certified a class. The Riverside County Superior Court Case
27 Number is RICJCCP4930.

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ff) Our firm represented the plaintiffs in a wage-and-hour class and PAGA representative action against a plastic packaging company on behalf of non-exempt employees. On June 8, 2020, the court granted in part the plaintiffs' motion for class certification and certified a class. The San Bernardino County Superior Court Case Number is CIVDS1507361.

gg) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action against manufacturer and supplier of power products and services on behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion for class certification and certified a class. The San Diego County Superior Court Case Number is 37-2015-00025968-CU-OE-CTL.

PRELIMINARY APPROVAL

8. Marked and attached hereto as "**Exhibit 1**" is the Joint Stipulation of Class Action Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff Avis Davis ("Plaintiff"), individually and on behalf of all others similarly situated, on the one hand, and Defendants Grocery Delivery E-Services USA Inc. and Insperity PEO Services, L.P. ("Defendants"), on the other hand (collectively, the "Parties"). The Parties and their counsel have approved the proposed Notice of Class Action and Proposed Settlement ("Class Notice"), which is attached to the Settlement Agreement as "Exhibit C" and respectfully request that the Court approve it as well. The Parties have also drafted and agreed to the form and content of the proposed First Amended Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.* ("First Amended Complaint"), which is attached to the Settlement Agreement as "Exhibit A". As part of the Settlement, the Parties agreed to amend the complaint to assert, in addition to the claims asserted in the Class Action Complaint for Damages ("Original Complaint"), a cause of action for violation of PAGA (Labor Code section 2698 *et seq.*) on behalf of Plaintiff and aggrieved employees, for the purposes of resolution of the Action. Class Counsel respectfully requests that the Court grant leave to file the First Amended Complaint so that the terms of the Settlement Agreement and the intent of the Parties may be effectuated.

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1 9. Based on information provided by Defendants, as of May 5, 2020, the Class is
2 estimated to consist of approximately four hundred fourteen (414) individuals.

3 10. The effectiveness of Lawyers for Justice, PC ("Class Counsel") in prosecuting this
4 matter has translated into tangible monetary benefits for the Class Members in the following
5 respects: (1) Class Members recover over a reasonably short period of time as opposed to waiting
6 additional years for the same, or possibly worse, result; (2) a guaranteed result that compares
7 favorably with other similar class action settlements of this type given the strengths and
8 weaknesses of the case; and (3) significant savings in Class Counsel's fees and/or costs that would
9 have only increased significantly had the case progressed through certification, trial, and/or
10 appeals.

11 11. Class Counsel has litigated the Action for over two years, and was actively preparing
12 the matter for class certification and trial. The Parties have engaged in extensive settlement
13 negotiations and participated in a formal, full-day mediation conducted by Marc J. Feder, Esq., a
14 well-respected mediator experienced in mediating complex labor and employment matters. Prior
15 to and during the mediation and settlement discussions, the Parties exchanged class information
16 and engaged in an extensive discussion regarding their evaluations of the case and various aspects
17 of the case, including but not limited to, the risks and delays of further litigation, the risks to the
18 Parties of proceeding with class certification and/or representative adjudication, the law relating
19 to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour
20 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among
21 other things. During all settlement discussions, the Parties conducted their negotiations at arm's
22 length in an adversarial position. Arriving at a settlement that was acceptable to all Parties was
23 not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and
24 at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
25 certification and prevail at trial. After conducting investigations, formal and informal discovery,
26 and exchange of information, extensive settlement negotiations, and with the aid of the mediator's
27 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
28 issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would

1 attend further litigation. The Settlement is a fair, reasonable, and adequate resolution of the
2 Released Claims of the Releasing Parties against the Released Parties.

3 12. The Parties used the pre-mediation time to investigate the veracity, strength, and
4 scope of the claims, and Class Counsel was preparing the Action for class certification and trial.
5 Prior to engaging in mediation, Plaintiff conducted significant investigation and formal and
6 informal discovery regarding the facts of the case, including and not limited to, the exchange,
7 review, and analysis of a large volume of documents and data obtained from Defendants and other
8 sources. Class Counsel propounded multiple sets of formal written discovery requests onto
9 Defendants and reviewed Defendants' objections, responses, and supplemental responses thereto,
10 as well as noticed the depositions of Defendants' Person Most Knowledgeable designees and
11 reviewed Defendants' objections thereto. Class Counsel also worked with Plaintiff to review and
12 provide responses to the formal discovery requests propounded by Defendants. The volume of
13 data and documents that Class Counsel reviewed and analyzed included and was not limited to:
14 Plaintiff and other Class Members' employment records, a sampling of Class Members' time and
15 pay data, multiple iterations of portions of Defendants' Employee Handbook, agreements
16 (including, but not limited to, Defendants' Employment Agreement and Second Meal Break
17 Waiver Agreement), company policy acknowledgements (including, but not limited to, the
18 Statement of Understanding for Time and Attendance, California Employee Notice and
19 Acknowledgment, Handbook Acknowledgment, and Employee Acknowledgment of the
20 Attendance Policy, Code of Conduct, Disciplinary Action Procedures, Travel Reimbursement
21 Policy, and other company policies), internal memoranda, job descriptions, Defendants'
22 operations and employment practices, forms (including, but not limited to, Defendants' Time
23 Clock Missed Punch Form, Disciplinary Action Form, and Employee Termination Form),
24 procedures (including, but not limited to, Defendants' Electronic Timekeeping, TimeStar System
25 Setup Document, California Lunch Penalty, and Disciplinary Schedule procedures), and policies
26 (including, but not limited to, Defendants' Pay Practices, TimeSheets, Classifications of
27 Employment, Overtime for Non Exempt Employees, Rest and Meal Periods for Non Exempt
28 Employee, Company Property Inspection, Wireless Communication Device Use Guidelines, Paid

1 Time Off, Time & Attendance, California Specific Policies, and holiday restrictions on overtime
2 pay policies), among other information and documents. Class Counsel interviewed Plaintiff and
3 other Class Members to gather facts and to identify potential witnesses. Counsel for the Parties
4 also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings,
5 motion practice, discovery, and the production of documents and data prior to the mediation. Class
6 Counsel also drafted pleadings and mediation brief and prepared for and attended court
7 proceedings, mediation, and settlement negotiations, among other tasks.

8 13. Counsel for the Parties have also invested time researching and investigating the
9 applicable law, which is constantly evolving as it relates to certification, representative PAGA
10 claims, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims
11 and damages, and Defendants' defenses thereto, as well as facts discovered. Based on our analysis,
12 I submit that the result achieved in this litigation is fair, adequate, and reasonable.

13 14. The Settlement provides for a Gross Settlement Amount of five hundred fifty
14 thousand dollars (\$550,000.00). The Net Settlement Amount is the Gross Settlement Amount less
15 the following amounts subject to approval by the Court: Class Counsel Award to Class Counsel,
16 Class Representative Enhancement Payment to Plaintiff, Settlement Administration Costs to the
17 Settlement Administrator, and LWDA Payment to the Labor and Workforce Development Agency
18 ("LWDA"). Assuming that the amounts allocated under the Settlement toward these payments
19 are awarded by the Court, the Net Settlement Amount is currently estimated to be two hundred
20 eighty-four thousand five hundred dollars (\$284,500.00). The Gross Settlement Amount will be
21 fully distributed in accordance with the terms of the Settlement and there is no reversion to
22 Defendants.

23 15. The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement
24 Administrator") to handle the notice and settlement administration. The Parties respectfully
25 request that the Court appoint Simpluris to handle these procedures and serve as the Settlement
26 Administrator. Defendants will provide Simpluris with a list of Class Members that Defendants
27 will compile from its records, which will include each Class Member's full name; mailing address
28 and telephone number last known to Defendants; Social Security number; dates of employment

1 with Defendants as a non-exempt employee during the Class Period; and number of Workweeks
2 worked (collectively, "Class List"). Simpluris will then calculate the amount to be paid to each
3 Settlement Class Member ("Individual Settlement Payment"). Simpluris will also receive
4 Requests for Exclusion, Objections, and Workweeks Disputes; provide necessary reports and
5 declarations; calculate, subtract, and transmit necessary taxes and withholdings; prepare and
6 submit informational and other tax filings and documents; issue and transmit all payments
7 provided for by the Settlement, including and not limited to, mailing Individual Settlement
8 Payment checks to the Settlement Class Members; and perform any other usual and customary
9 duties for administering a class action settlement. Settlement Administration Costs are currently
10 estimated not to exceed ten thousand dollars (\$10,000.00) and will be paid out of the Gross
11 Settlement Amount, subject to approval of the Court.

12 16. Based on investigation and information discovered, Class Counsel believes that
13 there is sufficient evidence to support the allegations made in the Action, including the allegations
14 that Defendants, with respect to Plaintiff and the Class Members, *inter alia*, failed to properly pay
15 overtime and minimum wages and associated premium pay, failed to provide compliant meal and
16 rest periods and to pay associated premium pay, failed to timely pay wages during employment
17 and upon termination of employment, failed to provide compliant wage statements, failed to
18 maintain requisite payroll records, and failed to reimburse necessary business expenses, and
19 thereby engaged in unfair business practices and conduct giving rise to penalties recoverable under
20 the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*). Plaintiff
21 also asserted that Class Members were expected to perform similar job duties and were subject to
22 the same or similar operations and employment policies, practices, and procedures. Additionally,
23 Plaintiff asserted that Defendants' recordkeeping practices with respect to Plaintiff and the Class
24 Members were substantially the same during the time period at issue. As a result, Plaintiff claims
25 that the Class Members, were uniformly not paid all of the compensation that was owed to them
26 by Defendants since November 6, 2014. Thus, in Class Counsel's view, it is clear that the outcome
27 of this litigation would be determined by Defendants' uniform operations and employment
28 practices, policies, and procedures that Plaintiff alleges applied across their non-exempt hourly

1 employees who were co-employed by Defendants within the state of California during the Class
2 Period.

3 17. Class Counsel is aware of the defenses and position of Defendants, but believes that
4 Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff has also taken
5 into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
6 delays inherent in such litigation, including those involved in class certification and/or
7 representative adjudication. Plaintiff further recognizes the burdens of proof necessary to establish
8 liability for the claims asserted in the Action, Defendants' defenses, and the difficulties in
9 establishing entitlement to monetary recovery. Plaintiff has also considered the Parties' settlement
10 discussions, as well as the evaluations of the mediator, who is experienced and well-regarded in
11 complex labor and employment matters.

12 18. Defendants, on the other hand, denied and continue to deny any liability and
13 wrongdoing of any kind associated with the claims alleged in the Action, and further deny that the
14 lawsuit is appropriate for class treatment or representative adjudication for any purpose other than
15 this Settlement. Defendants believe that they would ultimately succeed in the matter. Both sides
16 have also had the opportunity to interview witnesses and review documents and information
17 relating to Plaintiff's and Class Members' employment with Defendants, and Defendants'
18 operations and employment policies, practices, and procedures. The Parties also reviewed and
19 analyzed a large volume of documents and data, including but not limited to a sampling of Class
20 Members' wage information, to determine the potential value and strength of the claims. The
21 available information enabled Class Counsel to estimate the potential claims of the Class and
22 prepare damages/valuation models. Accordingly, the Parties have conducted adequate
23 investigation and discovery to be sufficiently informed of the nature and extent of the Class
24 Members' claims, and to enable both sides to fully evaluate the Settlement for its fairness,
25 adequacy, and reasonableness. The Parties have agreed that the matter is well-suited for settlement
26 given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both
27 sides that would attend further litigation. The Settlement takes into account the strengths and
28 weaknesses of each side's position and the uncertainty of how the case might have concluded at

1 certification, trial, and/or appeals.

2 19. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
3 in an amount of up to thirty-five percent (35%) of the Gross Settlement Amount
4 (i.e., \$192,500.00) and expenses and costs in an amount not to exceed eighteen thousand dollars
5 (\$18,000.00), which will be paid out of the Gross Settlement Amount, subject to approval by the
6 Court. It should be noted that Class Counsel has borne all of the risks and costs of litigation and
7 will not receive any compensation until recovery is obtained.

8 20. The Settlement Agreement provides for payment of up to seven thousand five
9 hundred dollars (\$7,500.00) to Plaintiff as a Class Representative Enhancement Payment, to be
10 paid out of the Gross Settlement Amount subject to approval by the Court. Plaintiff spent
11 considerable time and effort to produce relevant documents and past employment records and to
12 provide the facts and evidence necessary to attempt to prove the allegations. Plaintiff was
13 available whenever Class Counsel needed her and actively tried to obtain information that would
14 benefit the Class. For example, Plaintiff reviewed deposition notices and discovery requests
15 propounded by Defendants, and located documents and provided responses thereto. Accordingly,
16 it is appropriate and just for Plaintiff to receive a reasonable Class Representative Enhancement
17 Payment, in addition to her Individual Settlement Payment, for her services on behalf of the Class.

18 21. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
19 in the best interest of the Class. Class Counsel further submits that the Settlement is within an
20 acceptable range of recovery for this type of litigation given the strengths and weaknesses of the
21 case, the inherent costs and risks of further litigation, and the costs and risks associated with class
22 certification, representative adjudication, trial, and/or appeals.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed on this 19th day of January 2021, at Glendale, California.

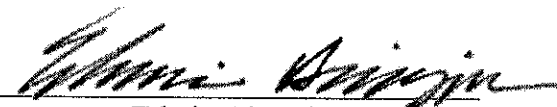
26 
27 Edwin Aiwanian
28

EXHIBIT 1

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INSPERITY PEO SERVICES, L.P.

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. and INSPERITY PEO SERVICES, L.P.,

Defendants.

No. C18-02253

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

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

Action Filed: November 6, 2018

This Joint Stipulation of Class Action Settlement and Release (the “Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Avis Davis (“Plaintiff”), as an individual and on behalf of all others alleged to be similarly situated, Defendant Grocery Delivery E-Services USA Inc. (“Grocery Delivery”) and Defendant Insperity PEO Services, L.P. (“Insperity”) (collectively, “Defendants”). (Plaintiff and Defendants each a “Party” and collectively the “Parties”). Except as otherwise specified, defined terms shall have the meanings set forth in the Recitals and Section 1 of this Agreement.

RECITALS

A. Plaintiff initiated the above-captioned lawsuit by filing a Class Action Complaint for Damages against Defendants on or about November 6, 2018 in the Superior Court for the County of Contra Costa (“Court”), Case No. C18-02253 (the “Action”). The Class Action Complaint for Damages (“Original Complaint”) alleges that Defendants failed to properly pay all minimum, premium and overtime wages owed to Plaintiff and the putative class members and asserted causes of action for (1) alleged failure to properly pay overtime wages or accurate overtime, citing California Labor Code sections 510, 1194 and 1198 and applicable Wage Orders, (2) alleged failure to provide meal periods or compensation in lieu thereof, citing California Labor Code sections 226.7 and 512 and applicable Wage Orders, (3) alleged failure to provide rest periods or compensation in lieu thereof, citing California Labor Code section 226.7 and applicable Wage Orders, (4) alleged failure to pay all wages or minimum wages owed citing California Labor Code sections 1194, 1197, 1197.1 and 1194.2, (5) alleged failure to timely pay all wages or final wages owed citing California Labor Code sections 201, 202 and 203, (6) alleged failure to timely pay all wages or amounts owed citing California Labor Code section 204, (7) alleged failure to comply with accurate employee wage statement requirements, citing California Labor Code sections 226, (8) alleged failure to maintain accurate records, citing California Labor Code sections 1174 and 1175 and applicable Wage Orders, (9) alleged failure to indemnify or reimburse all necessary expenditures, citing California Labor Code sections 2800 and 2802, and (10) alleged violations of the Unfair Competition Law (“UCL”), Business & Professions Code section 17200, *et seq.* Plaintiff’s Original Complaint asserted these claims on

1 behalf of an alleged class of non-exempt employees who worked for Defendants in California
2 and sought alleged unpaid or underpaid minimum, premium and overtime wages, compensatory
3 damages, statutory penalties, interest, attorney's fees, and costs.

4 B. On or about January 24, 2019 and February 1, 2019, Defendants Grocery Delivery
5 and Insperity each filed an answer to the Original Complaint, generally denying the claims and
6 allegations in the Original Complaint and asserting several affirmative defenses.

7 C. Thereafter, Plaintiff and Defendants engaged in both formal and informal
8 discovery, including document requests and interrogatories, and the production of documents,
9 employee time and payroll data, and other employee and policy information, as well as
10 discovery-related motion practice.

11 D. On May 7, 2020, the Parties participated in an all-day remote mediation before
12 Marc J. Feder, Esq. a respected mediator with significant experience mediating labor and
13 employment wage-and-hour class actions. Following the mediation, the Parties continued to
14 engage in negotiations, including with additional assistance from the mediator. Approximately
15 three months after the mediation, the Parties were able to agree to the material terms of this
16 Agreement.

17 F. At all times, Defendants have denied and continue to deny any wrongdoing and
18 deny that any of them committed, threatened, or attempted to commit, any of the wrongful acts or
19 violations of law or duty alleged in the Complaint or the Action, and instead contend that
20 Defendants have acted properly. Defendants also deny that Plaintiff or any of the Class members
21 are entitled to any form of wages, damages, penalties, interests, attorney's fees, costs, or any
22 relief whatsoever (at law or at equity) based on the conduct alleged in the Complaint or the
23 Action. In addition, Defendants maintain that they have meritorious defenses to the claims alleged
24 in the Complaint and the Action, and that they were prepared to vigorously defend the Action.
25 Nonetheless, taking into account the uncertainty and risks inherent in litigation, Defendants have
26 concluded that defense of the claims asserted in the Complaint and the Action would be
27 burdensome and expensive, and that it is desirable and beneficial to fully and finally settle and
28 terminate the Action in the manner and upon the terms and conditions set forth in this Agreement.

1 G. Plaintiff believes that the claims asserted in the Action have substantial merit.
2 Nonetheless, Plaintiff and her counsel, Edwin Aiwarzian and Arby Aiwarzian of Lawyers for
3 Justice, PC ("Class Counsel"), recognize and acknowledge the expense and length of continued
4 prosecution of the Action against Defendants through trial and any subsequent appeals. Plaintiff
5 and Class Counsel have also taken into account the uncertain outcome and risks of litigation,
6 especially in complex actions, as well as the difficulties and delays inherent in such litigation.
7 Based on their evaluation, Class Counsel have concluded that the terms and conditions of this
8 Settlement Agreement are fair, reasonable, and adequate to the Class, and that it is in the best
9 interests of the Class to settle the claims alleged in the Complaint and the Action pursuant to the
10 terms and provisions of this Settlement Agreement.

11 H. The Gross Settlement Amount was negotiated and agreed-upon by the Parties to
12 be the maximum amount to be paid by Defendants as a result of this Settlement, except as
13 expressly provided in Section 6.2 or Section 2.1(c). The value of the Gross Settlement Amount
14 was expressly negotiated to account for and cover the payment of the Class Representative
15 Enhancement Payment, the Settlement Administration Costs to the Settlement Administrator,
16 the Class Counsel Award to Class Counsel, the LWDA Payment, and as described in Section
17 7.1, all payments to Settlement Class Members, including any required employee withholdings
18 and taxes (all capitalized terms defined below). In no event shall Defendants be required to pay
19 more than the Gross Settlement Amount and Defendants' share of any applicable payroll taxes
20 pursuant to this Agreement, except as expressly provided in Section 6.2.

21 I. This Agreement is made and entered into by and between Plaintiff, individually
22 and on behalf of all others alleged to be similarly situated, and Defendants, and is subject to the
23 terms and conditions hereof and the Court's approval. The Parties expressly acknowledge that
24 this Agreement is entered into solely for the purpose of compromising significantly disputed
25 complex claims and that nothing herein is an admission of liability or wrongdoing by any of the
26 Defendants. The Agreement's provisions, and all related drafts, communications and discussions,
27 cannot be construed as or deemed to be evidence of an admission or concession of any point of
28 fact or law by any person or entity and cannot be offered or received into evidence or requested in

1 discovery in this Action or any other action or proceeding as evidence of an admission or
2 concession. If for any reason the Agreement is not approved by the Court, it will be of no force
3 or effect.

4 **AGREEMENT**

5 **1. DEFINITIONS.**

6 The following section defines terms that are not defined above. Some definitions use
7 terms that are defined later in this Section:

8 **1.1** "Class" refers to the following group of individuals: "All current and former non-
9 exempt hourly employees who are or were co-employed by Grocery Delivery and Insperity
10 within the State of California, who have not executed arbitration agreements with class action
11 waivers, at any time during the Class Period." "Class Member(s)" refers to a member(s) of the
12 Class. Excluded from the Class are individuals co-employed by Grocery Delivery and Insperity
13 working as "Brand Ambassadors" or in other similar positions classified as exempt under the
14 outside sales exemption. Also excluded from the Class are any individuals who executed
15 individual separation or severance agreements containing general releases of all claims at the
16 time of their separation from employment with Defendants.

17 **1.2** "Settlement Administrator" means Simpluris, or any other third-party class
18 action settlement class administrator mutually agreed to by the Parties for the purposes of
19 administering this Settlement. The Parties will each ensure and represent that they do not have
20 any financial interest in the Settlement Administrator or otherwise have a relationship with the
21 Settlement Administrator that could create a conflict of interest.

22 **1.3** "Settlement Administration Costs" means the costs payable to the Settlement
23 Administrator for all fees and expenses reasonably and necessarily incurred as a result of
24 administering this Settlement, including but not limited to all costs and fees associated with
25 preparing, issuing and mailing/transmitting any and all notices and other correspondence to Class
26 Members (including copies of notices and correspondence in Spanish); all costs associated with
27 processing all Workweek Disputes, Requests for Exclusion, and Objections; all costs and fees
28 associated with computing, processing, reviewing, and paying the Individual Settlement

1 Payments; all tax document preparation, custodial fees, and accounting fees incurred by the
2 Settlement Administrator in maintaining the QSF; all costs and fees associated with calculating
3 tax withholdings and payroll taxes and making related payments to federal and state tax
4 authorities and issuing tax forms relating to payments made under the Settlement; all fees and
5 costs associated with any other payments to be made out of or into the QSF; all costs and fees
6 associated with preparing any other notices, reports, or filings to be prepared in the course of
7 administering disbursements from the QSF; and any other costs and fees incurred and/or charged
8 by the Settlement Administrator in connection with the execution of its duties under this
9 Settlement. The Settlement Administration Costs are estimated to not exceed ten thousand dollars
10 (\$10,000.00) and shall be payable from, and not in addition to, the Gross Settlement Amount.

11 **1.4** "Class Counsel" means Edwin Aiwazian and Arby Aiwazian of Lawyers *for*
12 Justice, PC.

13 **1.5** "Class Counsel Award" means the amount awarded by the Court pursuant to this
14 Agreement to Class Counsel for reasonable attorneys' fees and reimbursement of litigation
15 costs and expenses incurred in connection with the litigation and resolution of this Action,
16 including, but not limited to, costs associated with documenting the Agreement, securing the
17 Court's approval of the Agreement, administering the Agreement, obtaining entry of the
18 judgment in the Action, and expenses for any experts or consultants. The Class Counsel Award
19 shall be paid from, and not in addition to, the Gross Settlement Amount.

20 **1.6** "Class List" means a list of the Class Members formatted in Microsoft Office
21 Excel and shall include each Class Member's full name; mailing address and telephone number
22 last known to Defendants; Social Security number; dates of employment with Defendants as a
23 non-exempt employee during the Class Period; and number of Workweeks worked. The
24 Settlement Administrator will treat the Class List as confidential and the Class List shall not be
25 used for any purpose other than as set forth herein. The Settlement Administrator shall not
26 disclose the Class List to Class Counsel or any other person or entity.

1 **1.7** “Class Period” refers to the period of time from November 6, 2014 through the
2 date of entry of the Preliminary Approval Order, or 150 calendar days from the date of execution
3 of this Settlement Agreement, whichever is sooner.

4 **1.8** “Class Representative Enhancement Payment” means the amount to be awarded
5 by the Court pursuant to this Agreement to be paid to Plaintiff in recognition of her effort and
6 work in prosecuting the Action on behalf of the Class Members and others similarly situated,
7 and the associated risks of acting as a class representative. The Parties acknowledge and agree
8 that a Class Representative Enhancement Payment is not a wage payment representing
9 compensation for services rendered or other unpaid income otherwise owed to Plaintiff by
10 Defendants; rather, it is characterized as a non-wage payment attributable to Plaintiff’s role as
11 potential and actual class representative, and for the risks and work attendant to that role. As
12 such, income or employment tax withholdings or other deductions will not be made from the
13 payment of a Class Representative Enhancement Payment, but it shall be reported on an IRS
14 Form 1099 or similar form to the appropriate taxing authorities.

15 **1.9** “Class Settlement” means the settlement and resolution of the Released Claims,
16 except the PAGA Release.

17 **1.10** “Complaint” means the Original Complaint filed by Plaintiff on or about
18 November 6, 2018, and the First Amended Complaint to be filed pursuant to Section 3.1 of this
19 Agreement (which is substantially similar to the form attached to this Settlement Agreement as
20 Exhibit A).

21 **1.11** “Grocery Delivery’s Counsel” shall mean Cooley LLP.

22 **1.12** “Effective Date” means sixty-one (61) calendar days plus two court days after the
23 entry of the Final Approval Order and Judgment. However, in the event that an appeal or other
24 effort to obtain reconsideration or review has been initiated, the “Effective Date” shall instead
25 mean two court days after the date that such appeal or other reconsideration or review has been
26 finally concluded in favor of the Final Approval Order and Judgment and the Final Approval
27 Order and Judgment is no longer subject to review, whether by appeal, petitions for rehearing,
28 petitions for rehearing en banc, petitions for certiorari, or otherwise.

1 **1.13** "Final Approval Hearing" means the hearing at which the Court decides whether
2 to enter the Final Approval Order and Judgment.

3 **1.14** "Final Approval Order and Judgment" means an order finally approving the
4 Settlement as being fair, reasonable and adequate and certifying the Class. The [Proposed] Final
5 Approval Order and Judgment submitted to the Court for its approval shall be substantially
6 similar to the form attached to this Settlement Agreement as Exhibit E.

7 **1.15** "Gross Settlement Amount" means five hundred and fifty thousand dollars and no
8 cents (\$550,000.00).

9 **1.16** "Individual Settlement Payment" means the amount paid in settlement hereunder
10 to each Class Member as determined pursuant to the terms set forth in Section 7 below.

11 **1.17** "Insperity's Counsel" shall mean Fisher & Phillips LLP.

12 **1.18** "LWDA" means the California Labor and Workforce Development Agency.

13 **1.19** "LWDA Payment" means seventy-five percent (75%) of the PAGA Penalty
14 Payment, or \$37,500.00, to be paid to the LWDA.

15 **1.20** "Net Settlement Amount" means the Gross Settlement Amount less the Class
16 Representative Enhancement Payment to Plaintiff, the Settlement Administration Costs to the
17 Settlement Administrator, the Class Counsel Award to Class Counsel, and LWDA Payment. To
18 the extent the Court does not approve the full requested Class Representative Enhancement
19 Payment, Settlement Administration Costs to the Settlement Administrator, and/or Class
20 Counsel Award to Class Counsel, the amount not awarded will be part of the Net Settlement
21 Amount for distribution to Settlement Class Members.

22 **1.21** "Class Notice" means the notice of the proposed Settlement terms, as approved by
23 Class Counsel, Grocery Delivery's Counsel, Insperity's Counsel and the Court, to be provided to
24 Class Members. The Class Notice must be substantially similar to the form attached as Exhibit C
25 and contain: (a) information regarding the nature of the Action, (b) a summary of the terms of the
26 Agreement, (c) the definition of the Class, (d) the formula for calculating the Net Settlement
27 Amount (including the amounts sought for the Class Counsel Award, Class Representative
28 Enhancement Payment, Settlement Administration Costs and the PAGA Penalty Payment) and

1 Individual Settlement Payments, (e) estimated Workweeks and Gross Allocated Amount (as
2 defined in Section 7, (f) the dates which comprise the Class Period, (g) instructions on how to
3 submit a Workweek Dispute, Request for Exclusion, or Objection, and (h) the deadlines by which
4 Workweek Disputes, Requests for Exclusion, or Objections to the Agreement must be submitted
5 to the Settlement Administrator.

6 **1.22** "Objection" means a Class Member's valid and timely written objection to the
7 Settlement Agreement. For the Objection to be valid, it must: (a) state the case name and
8 number of the Action, (b) contain the Class Member's name, current mailing address, most
9 current telephone number, and last four digits of his or her Social Security number, (c) state the
10 basis for the objection, (d) be signed by the Class Member, (e) be submitted to the Settlement
11 Administrator at the address specified in the Class Notice; and (f) be submitted with proof of
12 the submission date (such as a U.S. Postal Service postmark or another delivery service date
13 stamp) on or before the Response Deadline. If the Class Member intends to speak at the Final
14 Approval Hearing, through an attorney or otherwise, the Objection must also contain the
15 statement: "Notice of Intention to Appear at Final Approval Hearing."

16 **1.23** "PAGA Penalty Payment" means fifty thousand dollars and no cents (\$50,000.00)
17 to be paid to settle any and all claims for which penalties under PAGA may be sought or are
18 otherwise available, as set forth in Section 2.5 of this Agreement.

19 **1.24** "Preliminary Approval Order" means the Court order granting preliminary
20 approval of the Agreement. The [Proposed] Preliminary Approval Order submitted to the Court
21 for its approval shall be substantially similar to the form attached to this Settlement Agreement
22 as Exhibit B.

23 **1.25** "QSF" means the "Qualified Settlement Fund" which is an interest-bearing
24 account designated and controlled by the Settlement Administrator as described in Section 2.

25 **1.26** "Released Claims" means any manner of action, cause of action, claim, demand,
26 right, suit, obligation, debt, contract, agreement, promise, liability, or remedy of any nature
27 whatsoever (including without limitation any damages, charges, penalties, losses, costs, expenses,
28 and attorney's fees), whether in law or in equity, under contract, tort or any other subject area, or

1 under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds
2 whatsoever, including without limitation any and all alleged violations of the California Labor
3 Code and the California Business & Professions Code provisions alleged in the Complaint, that
4 were pled or that could have been pled, and claims sought or that could have been sought, based
5 on conduct, communications, acts or omissions occurring during the Class Period or arising out
6 of the factual allegations of the Complaint, whether foreseen or unforeseen, fixed or contingent.
7 The Released Claims do not include claims under the federal Fair Credit Reporting Act, 15
8 U.S.C. §1681.

9 **1.27** "Released Parties" means Grocery Delivery and Insperity and any of their
10 respective current and former directors, officers, members, administrators, agents, insurers,
11 beneficiaries, trustees, employee benefit plans, representatives, partners, accountants, servants,
12 employees, attorneys, parents, subsidiaries, affiliates, divisions, branches, units, shareholders,
13 investors, contractors, successors, joint venturers, predecessors, related entities, and assigns, and
14 all other individuals and entities acting by, through, under and/or in concert with them, or any of
15 them.

16 **1.28** "Releasing Parties" means Plaintiff and all Class Members who do not timely
17 submit a Request for Exclusion, and each of their successors, assigns, legatees, heirs, and
18 personal representatives.

19 **1.29** "Request for Exclusion" means a timely and valid written request submitted by a
20 Class Member indicating that he or she requests to be excluded from the Class Settlement. The
21 Request for Exclusion must: (a) state the case name and number of the Action, (b) set forth the
22 name, address, and telephone number of the Class Member requesting exclusion; (c) be signed
23 by the Class Member; (d) be addressed to the Settlement Administrator; and (e) be postmarked
24 on or before the Response Deadline.

25 **1.30** "Response Deadline" means the deadline by which Class Members must submit
26 to the Settlement Administrator valid Workweek Disputes, Requests for Exclusion, or
27 Objections to the Agreement. Requests for Exclusion and Objections to the Agreement must be
28 submitted with proof of the submission date (such as a U.S. Postal Service postmark or another

1 delivery service date stamp) on or before the Response Deadline. Workweek Disputes may be
2 submitted with proof of the submission date (such as a U.S. Postal Service postmark or another
3 delivery service date stamp) on or before the Response Deadline, or submitted electronically on
4 or before the Response Deadline. The Response Deadline shall be as set by the Court, but at
5 least forty-five (45) calendar days from the initial mailing of the Class Notice to Class Members
6 pursuant to Section 4. In the event of a re-mailed Class Notice, the Response Deadline will be
7 extended an additional fifteen (15) calendar days for that individual Class Member.

8 **1.31** "Settlement Class Member(s)" means a Class Member who has not opted out of
9 the Class Settlement by submitting a valid and timely Request for Exclusion.

10 **1.32** "Total Workweeks" is the total number of Workweeks worked by all Settlement
11 Class Members during the Class Period.

12 **1.33** "Workweek" means any week (i.e., seven consecutive 24-hour days from
13 Monday through Sunday) during which work was performed by a Class Member as a non-
14 exempt hourly employee in California. All Class Members will be credited with at least one (1)
15 Workweek.

16 **1.34** "Workweek Dispute" means the a written letter that a Class Member must submit
17 to the Settlement Administrator with proof of the submission date (such as a U.S. Postal Service
18 postmark or another delivery service date stamp) on or before the Response Deadline, if he or
19 she wishes to dispute the number of Workweeks credited to him or her. The Workweek Dispute
20 must: (a) state the case name and number of the Action, (b) set forth the Class Member's name,
21 address, and telephone number; (c) be signed by the Class Member; (d) include any
22 documentary evidence showing that the Workweek information is inaccurate; and (e) be
23 postmarked or submitted to the Settlement Administrator on or before the Response Deadline.

24 **2. SETTLEMENT RELIEF AND RELEASES.**

25 **2.1 Gross Settlement Amount.**

26 (a) Defendants shall pay the Gross Settlement Amount into the QSF within
27 five (5) business days after the Effective Date.
28

1 (b) The Parties agree that the QSF is intended to be a "Qualified Settlement
2 Fund" under Section 468B of the Code and Treas. Reg. §1.468B-1, 26 CFR § 1.468B-1, et seq.,
3 and will be administered by the Settlement Administrator as such. Among other duties of the
4 Settlement Administrator provided by this Settlement, the Settlement Administrator shall open
5 and administer a settlement account in such a manner as to qualify, and maintain the qualification
6 of, the account as a "Qualified Settlement Fund" under Section 468B of the Code and Treas. Reg.
7 §1.468B-1 and satisfy all federal, state and local income and other tax reporting, return, and filing
8 requirements with respect to the QSF. The Parties and the Settlement Administrator shall treat the
9 account as coming into existence as a Qualified Settlement Fund on the earliest date permitted as
10 set forth in 26 CFR §1.468B-1(j)(2)(i), and such election statement shall be attached to the
11 appropriate returns as required by 26 CFR §1.468B-1(j)(2)(ii). The Parties agree to cooperate
12 with the Settlement Administrator and one another to the extent reasonably necessary to carry out
13 the provisions of this Section.

14 (c) The Gross Settlement Amount shall be used to pay all amounts
15 contemplated or required by this Agreement, including the Class Representative Enhancement
16 Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, the
17 Class Counsel Award to Class Counsel, the PAGA Penalty Payment, and as described in Section
18 7, to cover all payments to Settlement Class Members, including the employee's share of
19 withholdings and taxes. The employer's share of payroll taxes on the wages portion of Individual
20 Settlement Payments will be paid separately by Defendants, in addition to the Gross Settlement
21 Amount.

22 (d) Grocery Delivery, Insperity and/or the Settlement Administrator will
23 calculate the amounts to be paid to Settlement Class Members in accordance with the terms and
24 provisions of this Agreement and in accordance with applicable state and federal law (including
25 tax regulations).

26 (e) No person or entity shall have any claim against Grocery Delivery,
27 Grocery Delivery's Counsel, Insperity, Insperity's Counsel, Plaintiff, Class Members, Class
28 Counsel or any Settlement Administrator based on distributions and payments made in

1 accordance with this Agreement.

2 **2.2 Class Counsel Award.** Defendants agree not to oppose Class Counsel's application
3 for attorneys' fees up to thirty-five percent (35%) of the Gross Settlement Amount (i.e.,
4 \$192,500.00), and eighteen thousand (\$18,000.00) in litigation costs and expenses subject to
5 proof before the Court. Plaintiff and Class Counsel agree to not petition the Court for more than
6 thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$192,500.00) and eighteen
7 thousand (\$18,000.00) in litigation costs and expenses subject to proof before the Court. Class
8 Counsel will file any papers supporting the request for the Class Counsel Award with the Court
9 sixteen (16) court days before the Final Approval Hearing. Class Counsel shall provide the
10 Settlement Administrator their current and valid Form W-9 within five (5) business days of the
11 Effective Date. If the Court approves the Settlement of this Action and a payment of a Class
12 Counsel Award, and so long as Class Counsel has timely provided the Settlement Administrator
13 with their current and valid Form W-9, Class Counsel shall be paid the Class Counsel Award
14 approved by the Court out of the QSF within ten (10) business days after the Effective Date. With
15 respect to the Class Counsel Award to Class Counsel, the Settlement Administrator may purchase
16 an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for
17 Class Counsel. Any additional expenses for the purchase of an annuity by the Settlement
18 Administrator shall be paid separately by Class Counsel and shall not be included within the
19 Settlement Administration Costs. Defendants and Defendants' counsel shall not be liable for any
20 expenses associated with the purchase of an annuity by the Settlement Administrator.

21 **2.3 Class Representative Enhancement Payment.** Defendants agree not to oppose any
22 motion or application by Plaintiff for a Class Representative Enhancement Payment of up to
23 seven thousand and five hundred dollars (\$7,500.00). Plaintiff agrees to not petition the Court for
24 more than \$7,500.00 for a Class Representative Enhancement Payment. Plaintiff will file any
25 papers supporting the request for a Class Representative Enhancement Payment with the Court at
26 least sixteen (16) court days prior to the Final Approval Hearing. Plaintiff shall provide the
27 Settlement Administrator a current and valid Form W-9 within five (5) business days of the
28 Effective Date. If the Court approves the Settlement of this Action and a Class Representative

1 Enhancement Payment, so long as Plaintiff has timely provided the Settlement Administrator a
2 current and valid Form W-9, the Settlement Administrator shall pay the Class Representative
3 Enhancement Payment awarded by the Court to Plaintiff from the QSF within ten (10) business
4 days after the Effective Date. Plaintiff acknowledges that she has obtained no tax advice from
5 Grocery Delivery, Grocery Delivery's Counsel, Insperity or Insperity's Counsel, and that Grocery
6 Delivery, Grocery Delivery's Counsel, Insperity and Insperity's Counsel have not made any
7 representation concerning the tax consequences, if any, of the Class Representative Enhancement
8 Payment. Plaintiff agrees that she is solely responsible for the tax consequences of the Class
9 Representative Enhancement Payment.

10 **2.4** Reduction in Class Representative Enhancement Payment or the Class Counsel
11 Award. In the event that the Court (or any appellate court) awards less than the amount requested
12 for the Class Counsel Award or the Class Representative Enhancement Payment, only the
13 awarded amounts shall be paid and shall constitute satisfaction of those obligations and full
14 payment thereunder, and any remaining or un-awarded portion of the requested Class Counsel
15 Award and/or the Class Representative Enhancement Payment shall be allocated to the Settlement
16 Class Members pursuant to the terms of Section 7. To the extent the Court does not approve any
17 or all of the amount of the Class Counsel Award and/or the Class Representative Enhancement
18 Payment, the Settlement shall remain binding, and this will not be a justification for Plaintiff to
19 withdraw from the Settlement. Plaintiff shall not have the right to revoke the Settlement
20 Agreement if the Court reduces or does not approve the requested Class Counsel Award, although
21 Plaintiff shall retain the right to appeal any reduction of Class Counsel Award.

22 **2.5** Payment And Allocation Of The PAGA Penalty Payment. Fifty thousand dollars
23 and no cents (\$50,000.00) will be paid from the Gross Settlement Amount for settlement and
24 release of any and all claims for which penalties under PAGA may be sought or are otherwise
25 available to any member of the Class, as the PAGA Penalty Payment. Pursuant to the express
26 requirements of Labor Code section 2699(i), the PAGA Penalty Payment shall be allocated as
27 follows: thirty-seven thousand and five hundred dollars and no cents (\$37,500.00) (75%) to the
28 LWDA, and twelve thousand and five hundred dollars and no cents (\$12,500.00) (25%) to the

1 Net Settlement Amount for distribution to Class Members. The portion of the PAGA Penalty
2 Payment allocated to the LWDA (i.e., the LWDA Payment) shall be paid out of the QSF within
3 ten (10) business days after the Effective Date by the Settlement Administrator.

4 **2.6** Release of Claims by Class Members. Upon the Effective Date, Releasing Parties
5 shall waive and forfeit, and be deemed to have fully, finally and forever released and
6 discharged all Released Claims against all Released Parties.

7 **2.7** PAGA Release And Binding Effect Of Judgment. Upon the Effective Date,
8 Plaintiff and all Class Members shall on behalf of themselves and on behalf of the State of
9 California waive, release, forever discharge the Released Parties from any kind of claim or action
10 for civil penalties under the PAGA (the Private Attorneys General Act, Labor Code section 2698,
11 *et seq.*) during the Class Period, based on or arising out of the factual allegations of the
12 Complaint including, but not limited to, any claims under California Labor Code sections 201,
13 202, 203, 204, 210, 218.5, 218.6, 221, 222, 223, 226, 226.7, 510, 512, 551, 552, 1174, 1194,
14 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2800 and 2802 (the "PAGA Release").

15 **2.8** Release of Claims by Plaintiff. Upon the Effective Date, Plaintiff and each of her
16 successors, assigns, legatees, heirs, and personal representatives waive, release, forever discharge,
17 and will not pursue any manner of action, cause of action, claim, demand, right, suit, obligation,
18 debt, contract, agreement, promise, liability, or remedy of any nature whatsoever (including
19 without limitation any damages, charges, penalties, losses, costs, expenses, and attorneys' fees),
20 whether in law or in equity, under contract, tort or any other subject area, or under any statute,
21 rule, regulation, order, or law, whether federal, state, or local, on any grounds whatsoever, arising
22 out of or relating to any acts, facts, omissions or obligations, whether known or unknown,
23 whether foreseen or unforeseen, fixed or contingent, against any or all of the Released Parties.
24 This release shall not apply to claims for workers' compensation benefits, unemployment
25 insurance benefits, pension or retirement benefits, or any other claim or right that cannot be
26 waived or released as a matter of law. In addition, Plaintiff, and each of Plaintiff's successors,
27 assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the
28 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the

1 California Civil Code, or any other similar provision under federal or state law, which provides:

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

8 Plaintiff agrees that this waiver is an essential and material term of this release and the settlement
9 that underlies it and that without such waiver the settlement would not have been accepted.

10 3. PRELIMINARY APPROVAL PROCESS.

11 3.1 First Amended Complaint. Within two (2) days of execution of this Agreement,
12 Plaintiff will submit a PAGA letter to the LWDA. On or before fifteen (15) court days after
13 execution of the Agreement or after the expiration of the PAGA exhaustion period, whichever is
14 later, the Parties agree that Plaintiff shall be permitted to file a First Amended Complaint in the
15 Court on behalf of herself and the Class (as defined in Section 1.1) to add allegations under
16 PAGA for purposes of this Settlement only, and that is substantially similar to the form attached
17 hereto as Exhibit A (the "First Amended Complaint").

18 3.2 Preliminary Approval Hearing. On or before fifteen (15) court days after execution
19 of the Agreement or after the expiration of the PAGA exhaustion period, whichever is later,
20 Plaintiff shall file her motion for preliminary approval seeking an order from the Court for: (i)
21 conditional certification of the Class for settlement purposes only; (ii) preliminary approval of the
22 Settlement Agreement; (iii) setting a date for the Final Approval Hearing; (iv) appointing Plaintiff
23 as class representative for settlement purposes only; and (v) appointing the law firm of Lawyers
24 for Justice, PC as Class Counsel for settlement purposes only. Defendants will not oppose
25 Plaintiff seeking conditional certification of the Class for settlement purposes only. Plaintiff shall
26 provide a copy of the Agreement to the LWDA, pursuant to Labor Code section 2699(l)(2), at the
27 same time that it is submitted to the Court.

28 3.3 Preliminary Approval of Notice. In conjunction with the motion for entry of the
Preliminary Approval Order, Plaintiff shall submit for Court approval the proposed Class
Notice. The Preliminary Approval Order shall also provide for the Class Notice to be sent to all

1 Class Members by the Settlement Administrator.

2 **3.4 Preliminary Approval Briefing.** Class Counsel shall draft the motion for
3 preliminary approval of the Settlement and provide Defendants with a copy of the draft
4 preliminary approval papers at least five (5) court days prior to filing so that Defendants may
5 provide any comments to the drafts. Defendants shall be permitted, but not required, to file their
6 own brief in support of the Preliminary Approval Order.

7 **4. NOTICE TO THE CLASS, OBJECTIONS, AND REQUESTS FOR EXCLUSION.**

8 **4.1 Delivery of the Class List.** Within fifteen (15) calendar days after entry of the
9 Preliminary Approval Order, Defendants shall provide the Class List to the Settlement
10 Administrator.

11 **4.2 Notice by First-Class U.S. Mail.** Within thirty (30) calendar days after entry of
12 the Preliminary Approval Order, the Settlement Administrator shall mail the Class Notice to all
13 Class Members via First-Class U.S. Mail, using the last known mailing addresses identified in
14 the Class List or updated through the National Change of Address Database. Each Class
15 Member's Class Notice shall include the number of Workweeks with which the Class Member
16 has been credited.

17 **4.3 Updating of Contact Information in the Class Lists.** After receiving the Class List
18 and prior to mailing the Class Notice, the Settlement Administrator shall perform a search based
19 on the National Change of Address Database for information to update and correct for any
20 known or identifiable address changes. If the Settlement Administrator determines that a Class
21 Member has more than one address and it cannot reasonably determine which address is the
22 most current, the Settlement Administrator shall mail the Class Notice to all such addresses.

23 **4.4 Re-Mailing of Notice.** Any Class Notice returned to the Settlement Administrator
24 as non-deliverable on or before the Response Deadline shall be sent promptly via First-Class
25 U.S. Mail to the forwarding address affixed thereto. With respect to Class Notices returned to
26 the Settlement Administrator without a forwarding address, the Settlement Administrator shall
27 make an attempt to locate an address by way of skip-trace and promptly re-mail the returned
28 Class Notice via First-Class U.S. Mail.

1 **4.5 Workweek Dispute Procedure.** To dispute the number of Workweeks with which
2 he or she has been credited, a Class Member must timely submit a Workweek Dispute to the
3 Settlement Administrator by the Response Deadline. The Workweek Dispute may be submitted
4 by U.S. Mail or other delivery service. The submission date is deemed to be, in the case of
5 submission by U.S. Mail or other delivery service, the date the Workweek Dispute is sent, as
6 evidenced by the postmark or other delivery service date stamp. Class Members who timely
7 submit Workweek Disputes may produce evidence to the Settlement Administrator showing
8 that the Workweek information is inaccurate. The Settlement Administrator shall decide the
9 dispute. Defendants' records will be presumed correct, but the Settlement Administrator will
10 evaluate the evidence submitted by the Class Member and will make the final decision as to the
11 merits of the dispute. The Settlement Administrator may ask Defendants to produce the
12 personnel and payroll files of the Class Member disputing his or her credited Workweeks in
13 order for the Settlement Administrator to resolve the dispute. Defendant shall strive to provide
14 such information within ten (10) business days of the Settlement Administrator's request. It is
15 understood and agreed that any decision by the Settlement Administrator shall not operate to
16 increase the Gross Settlement Amount unless resolution of the Workweek Dispute causes the
17 Workweeks threshold in Section 6.2 to be exceeded.

18 **4.6 Request for Exclusion Procedures.** Any Class Member wishing to opt out of the
19 Class Settlement must submit by U.S. Mail or other delivery service a written and signed
20 Request for Exclusion to the Settlement Administrator (at the address set forth in the Class
21 Notice) containing all the information required by Section 1.29 of this Agreement, on or before
22 the Response Deadline. The date the Request for Exclusion is sent, as evidenced by the
23 postmark or other delivery service date stamp, shall be the exclusive means to determine
24 whether a Request for Exclusion has been timely submitted. Class Members who submit a
25 timely and valid Request for Exclusion will not be bound by the Class Settlement and will have
26 no standing to object to the Settlement; however, they will be bound by the PAGA Release.

27 **4.7 Objection Procedures.** To object to the Class Settlement, a Settlement Class
28 Member must submit a valid Objection, by U.S. Mail or other delivery service, to the Settlement

1 Administrator (at the address set forth in the Class Notice) on or before the Response Deadline.
2 The Objection must be signed by the Settlement Class Member and contain all information
3 required by Section 1.22 of this Agreement. The date the Objection is sent, as evidenced by the
4 postmark or other delivery service date stamp, shall be the exclusive means to determine
5 whether an Objection has been timely submitted. Class Members who fail to object in the
6 manner specified above shall be deemed to have waived all objections to the Agreement and
7 shall be foreclosed from making any objections (whether by appeal or otherwise) to the Class
8 Settlement. Settlement Class Members who submit a timely Objection that contains the
9 statement "Notice of Intention to Appear at Final Approval Hearing" will have a right to speak
10 at the Final Approval Hearing in order to have their objections heard by the Court.

11 **4.8** Reports Regarding Individual Settlement Payment Calculations. The Settlement
12 Administrator shall provide Grocery Delivery's Counsel, Insperity's Counsel and Class Counsel
13 a weekly report which certifies the number of Class Members who have submitted (i)
14 Workweek Disputes, (ii) Requests for Exclusion, and (iii) Objections. Additionally, within five
15 (5) calendar days of the Response Deadline, the Settlement Administrator will provide to
16 counsel for both Parties a report containing the above-mentioned information ("Final Response
17 Report"). The Settlement Administrator will also provide to counsel for both Parties any
18 updated reports regarding the administration of the Agreement as needed or requested by either
19 Party individually, or by the Parties jointly, subject to the terms of this Agreement.

20 **4.9** Notice Sufficient. The Parties agree not to engage in any other form of non-Court-
21 sanctioned publicity relating to this Settlement or the Action.

22 **4.10** No Solicitation of Settlement Objections or Exclusions. The Parties agree that at
23 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
24 Members to submit Objections or Requests for Exclusion, or to appeal from the Court's Final
25 Approval Order and Judgment.

26 **4.11** Certification of Completion. The Settlement Administrator shall provide a
27 written declaration under oath certifying the completion of its notice-related tasks no later than
28 twenty-one (21) calendar days after the Response Deadline.

1 **5. FINAL APPROVAL HEARING; JUDGMENT.**

2 **5.1 Final Approval Hearing and Entry of the Final Approval Order and Judgment.**

3 Upon expiration of the deadlines to submit Workweek Disputes, Requests for Exclusion, or
4 Objections to the Agreement as described above, a Final Approval Hearing shall be conducted to
5 determine whether the Court should enter a Final Approval Order and Judgment, providing for,
6 among other things, payment of Individual Settlement Payments to Settlement Class Members
7 and the amounts properly payable for (i) the Class Counsel Award; (ii) the Class Representative
8 Enhancement Payment; (iii) the PAGA Penalty Payment; and (iv) all Settlement Administration
9 Costs. Plaintiff shall request that the Final Approval Hearing be held between ninety-five (95) and
10 one hundred twenty (120) calendar days after entry of the Preliminary Approval Order, subject to
11 the Court's availability and willingness to accept a shortened briefing schedule.

12 **5.2 Judgment and Continued Jurisdiction.** Pursuant to California Rules of Court,
13 Rule 3.769(h), upon final approval of this Agreement by the Court, the Parties shall present the
14 judgment to the Court for its approval. After entry of the judgment, the Court shall have
15 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
16 of the terms of the Agreement, (ii) Agreement administration matters, and (iii) such post-
17 judgment matters as may be appropriate under court rules or applicable law, or as set forth in
18 this Agreement.

19 **5.3 Settlement Terms Bind All Class Members Who Do Not Opt-Out.** Any Class
20 Member who does not affirmatively opt-out of the Class Settlement by submitting a timely and
21 valid Request for Exclusion shall be bound by all of the terms of the Agreement, including
22 those pertaining to the Released Claims, as well as any order that may be entered by the Court
23 if it grants final approval of this Agreement. Notwithstanding the submission of any timely and
24 valid Request for Exclusion, all Class Members will be bound by the PAGA Release under the
25 Final Approval Order and Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

26 **6. NULLIFICATION OR MODIFICATION OF AGREEMENT.**

27 **6.1 Defendants' Right to Revoke.** Defendants may terminate and withdraw from this
28 Agreement at any time prior to the date the Court's approval of the Agreement becomes "final"

(i.e., not subject to appeal or reconsideration) if: (a) the Agreement is construed in such a fashion that Defendants are required to pay more than the Gross Settlement Amount and Defendants' share of applicable payroll taxes, notwithstanding Section 6.2; (b) the Court makes an order inconsistent with any of the terms of this Agreement including, but not limited to, certifying for settlement purposes a class or representative action that is different from the Class defined in Section 1.1, or any modification relating to the release of all claims (except for an order reducing the Class Counsel Award or the Class Representative Enhancement Payment); (c) following the signing of this Agreement, any court certifies, whether on a conditional basis or not, a class, collective, or representative action involving a claim covered by this Agreement; or (d) more than five percent (5%) of the Class Members timely and validly opt out of the Settlement. If Defendants terminate the Agreement and withdraw under this provision, the terminating party will bear any Settlement Administration Costs incurred to the date of such termination. In the event that the basis for withdrawal is an order by the Court as described in items (a) and (b) above, the withdrawing Party must provide written notice to all other Parties of its intent to terminate and withdraw within one (1) week of the date on which the offending order is filed. Failure to provide timely notice will serve as a waiver of the right to revoke under the circumstances described in item (a) or (b) above.

6.2 Modification Based on Increase in Workweeks. Defendants have represented that the Class Members have worked approximately 32,079 Workweeks between November 6, 2014 and March 31, 2020, and Plaintiff is entering into this Agreement based on that representation. If the number of Workweeks worked by the Class increases by more than 18% through the date of Preliminary Approval or 150 days from the date of execution of this Agreement, whichever is sooner, then the Gross Settlement Amount shall be increased by the same number of percentage points above 18% by which the actual number of Workweeks exceed 32,079. For example, and for purposes of illustration only, if the number of Workweeks increases by 19% (1% over the 18% "grace"), the Gross Settlement Amount will increase by 1%.

6.3 Action Status if Settlement Not Approved. This Agreement is being entered into for Settlement purposes only. If [1] any Defendant terminated under Section 6.1, [2] the Court

1 conditions its approval of either the Preliminary Approval Order or the Final Approval Order and
2 Judgment on any modifications of this Agreement that are not acceptable to all Parties (including,
3 but not limited to, any modification of the Class or the claims and penalties being released) except
4 for any reduction of the Class Counsel Award or the Class Representative Enhancement
5 Payment, [3] the Court does not approve the Settlement Agreement or enter the Final Approval
6 Order and Judgment, or [4] the Effective Date does not occur for any reason, then this Agreement
7 will be deemed null and void *ab initio*, in which case (a) the Preliminary Approval Order, and/or
8 Final Approval Order and Judgment, and all of its or their provisions will be vacated by its or
9 their own terms, including, but not limited to, vacating conditional certification of the Class,
10 conditional appointment of Plaintiff as a class representative and conditional appointment of
11 Lawyers for Justice, PC as Class Counsel, (b) the Action will revert to the status that existed
12 before the execution date of the Memorandum of Understanding, (c) no term or draft of this
13 Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will
14 have any effect or be admissible into evidence for any purpose in the Action or any other
15 proceeding, (d) Defendants shall retain all rights to object to the maintenance of the Action as a
16 class action or representative action, and (e) nothing in this Agreement or other papers or
17 proceedings related to the Settlement shall be used as evidence or argument by any Party
18 concerning whether the Action may properly be maintained as a class action or representative
19 action.

20 **6.4** Additional Representations by Defendants. Defendants represent that no Class
21 Members worked as "Brand Ambassadors" or in other similar positions classified as exempt
22 under the outside sales exemption during the Class Period. Defendant Grocery Delivery
23 represents that it has not employed any individuals holding the position of "Merchandiser" since
24 November 6, 2014.

25 **7. DISTRIBUTION.**

26 **7.1** Individual Settlement Payment Calculations. Individual Settlement Payments
27 shall be calculated and apportioned by the Settlement Administrator as follows:
28

1 (a) The Settlement Administrator shall determine the number of
2 Workweeks during the Class Period for each Settlement Class Member and the Total
3 Workweeks based on the Class List provided by Defendants.

4 (b) The Settlement Administrator shall divide the Net Settlement
5 Amount by the number of Total Workweeks to derive the "Workweek Point Value."

6 (c) For each Settlement Class Member, the Settlement Administrator
7 shall multiply the number of Workweeks he or she worked during the Class Period by the
8 Workweek Point Value. The resulting figure shall be the "Gross Allocated Amount" for each
9 such Settlement Class Member.

10 (d) The Settlement Administrator shall allocate the Gross Allocated
11 Amount for each Settlement Class Member as one-quarter (1/4) wages, subject to applicable
12 employee's share of taxes and withholding, and three-quarters (3/4) interest and penalties. The
13 portion allocated to wages shall be reported on an IRS Form W-2 and the portions allocated to
14 interest and penalties shall be reported on an IRS Form-1099 (if applicable). The net amount
15 paid to a Settlement Class Member after withholding their employee share of taxes on the
16 wages portion (if applicable) is their Individual Settlement Payment.

17 **7.2 Individual Settlement Payments for Settlement Purposes Only.** Defendants will not
18 use the Individual Settlement Payments to calculate any additional benefits including, for
19 example (but without limitation), vacation, holiday pay, pension, or 401(k) plan contributions.
20 Defendants contend that the Individual Settlement Payments do not represent any modification of
21 previously credited hours of service or other eligibility criteria under any employee pension or
22 employee welfare benefit plan sponsored by Defendants. Nor do Defendants consider the
23 Individual Settlement Payments "compensation" for purposes of determining eligibility for, or
24 benefit accrual within, an employee pension benefit plan, an employee welfare benefit plan, or
25 other plan sponsored by Defendants or their predecessors, subsidiaries, or successors.

26 **7.3 Distribution Timing of Individual Settlement Payments.** Individual Settlement
27 Payments shall be mailed to Class Members within ten (10) business days following the
28 Effective Date.

1 **7.4 Uncashed Settlement Checks.** Any Individual Settlement Payment checks issued
2 pursuant to this Settlement shall be negotiable for at least one hundred and eighty (180)
3 calendar days. To remind Settlement Class Members of this time period for negotiating their
4 checks, the Settlement Administrator will send a postcard to all Settlement Class Members who
5 have not negotiated their Individual Settlement Payment check within 90 calendar days of the
6 mailing of the Individual Settlement Payment check. Settlement Class Members who fail to
7 negotiate their check(s) in a timely fashion shall remain subject to the terms of the Settlement,
8 including without limitation all releases contained herein, and Final Approval Order and
9 Judgment from the Court. The funds associated with any checks that are not timely negotiated
10 will be transmitted to the Unclaimed Property Fund maintained by the State Controller's Office in
11 the Settlement Class Member's name. After completion of the settlement distribution process, the
12 Settlement Administrator shall provide Class Counsel and Grocery Delivery's Counsel with a
13 declaration as to the total amount of any uncashed settlement checks. The funds transferred to the
14 State Controller's Office will remain the property of the Settlement Class Member who did not
15 negotiate the Individual Settlement Payment check, and therefore, this Settlement and the
16 associated Final Approval Order and Judgment do not and will not create any unpaid residue or
17 unclaimed or abandoned class member fund. As a result, the provisions of California Code of
18 Civil Procedure Section 384 do not apply to this action or this Settlement.

19 **7.5 Effect of Cashing or Depositing Checks.** The Complaint does not allege claims
20 under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA") and is thus not an FLSA
21 "action" under 29 U.S.C. § 216(b). The Parties agree this is an "opt-out" action under the
22 California Code of Civil Procedure that does not require an "opt-in" procedure to bind Class
23 Members to the terms of the Settlement, which includes the release of Released Claims as defined
24 in Sections 1.26 and 2.6. Nevertheless, and without prejudice to this position and without
25 changing the nature of this action, the Parties agree that Settlement Class Members who cash or
26 deposit an Individual Settlement Payment check are deemed to "opt-in" and consent to the
27 Settlement. Each Individual Settlement Payment check to Settlement Class Members will contain
28 the following language as further notice: "By cashing or depositing this check, I confirm my

1 consent to the Settlement, which includes releasing claims under the Fair Labor Standards Act, 29
2 U.S.C. § 201 *et seq.* ("FLSA")."

3 **8. MISCELLANEOUS PROVISIONS.**

4 **8.1 Cooperation.** The Parties shall cooperate fully with one another in seeking
5 approval of the Court of this Settlement and to use their respective best efforts to consummate the
6 Settlement and cause the Preliminary Approval Order and Final Approval Order and Judgment to
7 be entered and to become final. The Parties therefore agree to cooperate in good faith to promptly
8 prepare, execute and finalize all Settlement-related documents, seek all necessary Court
9 approvals, and do all other things necessary to consummate the Settlement. No Party to this
10 Agreement shall seek to evade his, her, or its good faith obligations to seek approval and
11 implementation of this Settlement by virtue of any ruling, order, governmental report or other
12 development, whether in the Action, in any other litigation or otherwise that hereafter might
13 occur and might be deemed to alter the relative strengths of the Parties with respect to any claims
14 or defenses or their relative bargaining power with respect to negotiating.

15 **8.2 Further Assurances.** The Parties must execute and deliver any additional papers,
16 documents and other assurances, and must do any other acts reasonably necessary, to perform
17 their obligations under this Settlement Agreement and to carry out its expressed intent. The
18 Parties and their counsel will cooperate with each other and use their best efforts to effect the
19 implementation of this Agreement. If the Parties are unable to reach agreement on the form or
20 content of any document needed to implement this Agreement, or on any supplemental
21 provisions that may become necessary to effectuate the terms of this Agreement, the Parties
22 may seek the assistance of the Court to resolve such disagreement.

23 **8.3 Extension of Postmark Deadlines falling on a Sunday or Federal Holiday.** If the
24 last day for a Class Member to submit any document under this agreement falls on a Sunday or
25 Federal holiday, the deadline will be extended to the next day on which the U.S. Postal Service is
26 open.

1 **8.4** Exhibits Incorporated by Reference. The terms of this Agreement include the
2 terms set forth in any attached Exhibit, which are incorporated by this reference as though fully
3 set forth herein. Any Exhibit to this Agreement is an integral part of the Settlement.

4 **8.5** Confidentiality. Plaintiff and Class Counsel will keep the Settlement Agreement
5 and related documents, and their settlement negotiations (including without limitation, the
6 negotiations in the course of mediation), confidential and will not disclose that information to any
7 third party until such time as Plaintiff files the motion seeking entry of the Preliminary Approval
8 Order. Plaintiff and Class Counsel will make no comments of any kind regarding the Settlement
9 Agreement to the press/media, or for purposes of advertising. Plaintiff and Class Counsel agree
10 that they will not issue any press releases or post any statements regarding the Settlement
11 Agreement on any websites or initiate any contact with the media. If Plaintiff and/or Class
12 Counsel are contacted by the media, or any other third party, regarding the Settlement Agreement,
13 they may only advise that the Action has been amicably resolved and refer them to the public
14 filings in the Action. Plaintiff and Class Counsel agree that they will not disclose the terms of the
15 Settlement Agreement on any websites or in any other materials not necessary for the facilitation
16 of the Settlement Agreement. Plaintiff and Class Counsel shall retain the right to discuss the
17 Settlement Agreement with the Parties and the Class. Plaintiff and Class Counsel agree to
18 maintain the confidentiality of any non-public information exchanged pursuant to the Parties'
19 stipulated protective order and that they will not disclose any settlement or mediation privileged
20 communications. Plaintiff and Class Counsel also agree and acknowledge that any breach of this
21 Section 8.5 may cause irreparable harm or damage to Defendants that is difficult to ascertain, and
22 thus Plaintiff and Class Counsel agree that any breach of this Section 8.5 shall give Defendants
23 the right to obtain injunctive or other applicable equitable relief, in addition to any other remedies
24 available in law or equity. Notwithstanding the foregoing, nothing in this Settlement Agreement
25 shall restrict Class Counsel from disclosing publicly available information regarding this
26 Settlement in any documents filed with any court and/or judicial submissions (e.g., CV's,
27 declarations regarding adequacy or experience, etc.).
28

1 **8.6 Non-Disparagement.** Plaintiff further agrees that she shall not commit any act or
2 make any statement that is, or could reasonably be interpreted as, detrimental to the business,
3 reputation, or good will of Grocery Delivery or Inspeity, including making any negative or
4 disparaging statements about either of their business, or their officers, directors, agents, and/or
5 other personnel (past and present), its employment policies and practices, operations, products, or
6 services, either as fact or opinion. Plaintiff acknowledges the terms of this Agreement shall not
7 preclude them from providing truthful testimony if mandated by subpoena or court order to do so,
8 or pursuant to any request from a government agency. Further, Plaintiff acknowledges the terms
9 of this Settlement Agreement shall not preclude them from advocating in favor of Court approval
10 of the Settlement.

11 **8.7 Grammar.** The neuter form of a pronoun shall be considered to include within its
12 meaning the masculine and feminine forms of the pronoun, and vice versa.

13 **8.8 No Conflict Intended.** Any inconsistency between this Settlement Agreement and
14 the attached exhibits will be resolved in favor of this Settlement Agreement.

15 **8.9 Headings and Formatting of Definitions.** The various headings used in this
16 Settlement Agreement are solely for the Parties' convenience and may not be used to interpret
17 this Settlement Agreement. The headings and the formatting of the text in the definitions do not
18 define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

19 **8.10 Interim Stay of Proceedings.** The Parties agree to refrain from further litigation
20 of the Action, except such proceedings necessary to implement and obtain entry of the Final
21 Approval Order and Judgment. The Parties shall jointly seek to stay all dates and deadlines in
22 the Action pending final approval of this Stipulation. The Parties further agree that the mutual,
23 voluntary cessation of litigation shall terminate if the motion for entry of the Preliminary
24 Approval Order or the Final Approval Order and Judgment are denied by the Court.

25 **8.11 No Injunctive Relief Against Defendants.** As part of this Settlement Agreement,
26 Defendants shall not be required to enter any consent decree, nor shall Defendants be required
27 to agree to any provision of injunctive relief.
28

1 **8.12** Waiver of Appeal. Plaintiff and Class Counsel agree to waive appeals of an order
2 granting final approval of this Settlement Agreement or entering judgment in this Action so long
3 as such order is consistent with the material terms of this Agreement.

4 **8.13** Class List. Within nine (9) months after the Effective Date and completion of the
5 administration, or in the event the Settlement is terminated pursuant to Section 6, all originals,
6 copies, documents, transcriptions, iterations, or drafts of the Class List or any portion thereof,
7 including any updated Class Member contact information obtained via, e.g., the National
8 Change of Address database, shall be returned to Defendant by the Settlement Administrator.

9 **8.14** Entire Agreement. This Agreement and any attached Exhibit constitutes the
10 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
11 agreements may be deemed binding on the Parties.

12 **8.15** Amendment or Modification. This Agreement may be amended or modified only
13 by a written instrument signed by counsel for all Parties or their successors-in-interest and if
14 after entry of the Preliminary Approval Order, as approved by the Court.

15 **8.16** Real Party in Interest. In executing this Settlement Agreement, the Parties warrant
16 and represent that they, including Plaintiff in her representative capacity on behalf of the Class
17 and all others alleged to be similarly situated, are the only persons having any interest in the
18 claims asserted in the Action. Neither these claims, nor any part of these claims, have been
19 assigned, granted, or transferred in any way to any other persons.

20 **8.17** Authorization to Enter Into Agreement. Counsel for all Parties warrant and
21 represent they are expressly authorized by the Party whom they represent to negotiate this
22 Agreement and to take all appropriate action required or permitted to be taken by such Parties
23 pursuant to this Agreement to effectuate its terms, and to execute any other documents required
24 to effectuate the terms of this Agreement.

25 **8.18** Voluntary Agreement. The Parties have negotiated the settlement at arms-length
26 and in good faith, with assistance from Marc Feder, a respected mediator, and have executed this
27 Settlement Agreement knowingly, voluntarily, and without duress or undue influence.
28

1 **8.19** Dispute Resolution. The Parties agree to have mediator Marc Feder seek to resolve
2 any and all disputes that may arise in connection with interpreting the terms of this Settlement
3 Agreement. In the event mediator Feder is unavailable, the Parties shall cooperate in good faith
4 to identify another mediator. Defendants and Class Counsel shall split equally and pay for any
5 mediator fees and costs associated with seeking mediator assistance pursuant to this Section
6 8.19. Under no circumstances shall any mediator fees or costs incurred pursuant to this Section
7 8.19 be taken out of the Gross Settlement Amount.

8 **8.20** Cooperation in Drafting. The Parties have cooperated in the drafting and
9 preparation of this Agreement. This Agreement shall not be construed against any Party on the
10 basis that the Party was the drafter or participated in the drafting.

11 **8.21** Change of Time Periods. All time periods and dates described in this Settlement
12 Agreement are subject to the Court's approval. These time periods and dates may be changed by
13 the Court or by the Parties' written agreement without notice to the Class.

14 **8.22** Binding on Successors and Assigns. This Agreement shall be binding upon, and
15 inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators,
16 successors and/or assigns.

17 **8.23** California Law Governs. All terms of this Agreement and Exhibits hereto shall
18 be governed by and interpreted according to the laws of the State of California.

19 **8.24** Execution and Counterparts. This Agreement may be executed in one or more
20 counterparts, including by email, by facsimile, and electronically. All executed counterparts and
21 each of them shall be deemed to be one and the same instrument provided that counsel for the
22 Parties shall exchange among themselves original signed counterparts.

23 **8.25** Inadmissibility. This Settlement Agreement (whether approved or not approved,
24 revoked, or made ineffective for any reason) and any proceedings or discussions related to it are
25 inadmissible as evidence of any liability or wrongdoing whatsoever in any Court or tribunal in
26 any state, territory, or jurisdiction. Further, neither this Settlement Agreement, the settlement
27 contemplated by it, nor any proceedings taken under it, will be construed or offered or received
28 into evidence as an admission, concession or presumption that class certification is appropriate,

1 except to the extent necessary to consummate this Settlement Agreement and the binding effect of
2 the Final Approval Order and Judgment.

3 **8.26** Agreement Constitutes a Complete Defense. To the extent permitted by law, this
4 Settlement Agreement may be pled as a full and complete defense to any action, suit, or other
5 proceedings that may be instituted, prosecuted or attempted against the Released Parties contrary
6 to any releases contained herein, including the release of the Released Claims and the PAGA
7 Release.

8 **8.27** Defendants' Position. Defendants state that they have acted lawfully at all times
9 and their employment policies and practices have been lawful, fair and consistent with all relevant
10 rules and regulations. Defendants deny all claims and allegations as to liability, damages,
11 penalties, interest, fees, restitution, injunctive relief and all other forms of relief as well as the
12 class allegations asserted in the Action. To the extent this Agreement is deemed void, Defendants
13 do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations
14 in the Action upon all procedural and factual grounds, including without limitation the ability to
15 challenge class, collective, and representative action treatment on any grounds, as well as
16 asserting any and all other potential defenses or privileges. Plaintiff and her counsel agree that
17 Defendants retain and reserve these rights. Specifically, Plaintiff and her counsel agree not to
18 argue or present any argument that, in the event this Agreement is not approved in full,
19 Defendants could not oppose any class or collective certification motion, file a later motion for
20 de-certification, contest any class action or collective certification on any grounds, or assert any
21 and all other potential defenses and privileges if any or all of the Action were to proceed.
22 Plaintiff and her counsel hereby waive such arguments and agree they will not take a position
23 contrary to this provision.

24 **8.28** No Admission of Liability. Nothing in this Settlement Agreement may be
25 construed as an admission or concession on any point of fact or law by or against any Party.

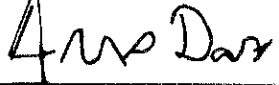
26 **(SIGNATURES ON THE FOLLOWING PAGE.)**
27
28

SIGNATURES - READ CAREFULLY BEFORE SIGNING

November 06, 2020

Dated: November __, 2020

PLAINTIFF AVIS DAVIS


2020-11-06 02:11:53 UTC - 69A16736

Avis Davis

GROCERY DELIVERY E-SERVICES USA INC.

November 14, 2020

Dated: November __, 2020

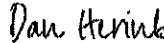


Uwe Voss

Please Print Name of Authorized Signatory

INSPERITY PEO SERVICES, L.P.

DocuSigned by:



Daniel D. Herink, SVP of Legal, General Counsel
and Secretary

Please Print Name of Authorized Signatory

1 **APPROVED AS TO FORM:**

2 November 13, 2020

3 Dated: November __, 2020

COOLEY LLP

4
5 By: Summer Wynn
6 Summer J. Wynn

7 Attorneys for Defendant
8 GROCERY DELIVERY E-SERVICES USA INC.

9 Dated: November 9, 2020

LAWYERS FOR JUSTICE, PC

10 By: Edwin Aiwan
11 Edwin Aiwan

12 Attorneys for Plaintiff
13 AVIS DAVIS

14 Dated: November 19, 2020

FISHER & PHILLIPS LLP

15 By: Mark Jacobs
16 Mark J. Jacobs

17 Attorneys for Defendant
18 INSPIRITY PEO SERVICES, L.P.

EXHIBIT A
[PROPOSED] FIRST AMENDED COMPLAINT

Edwin Aiwarzian (SBN 232943)
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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

1 capacities when the same have been ascertained.

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

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

9 **CLASS ACTION ALLEGATIONS**

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

13 14. The proposed class is defined as follows:

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

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

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

20 a. Numerosity: The class members are so numerous that joinder of all class
21 members is impracticable. The membership of the entire class is
22 unknown to Plaintiff at this time; however, the class is estimated to be
23 greater than fifty (50) individuals and the identity of such membership is
24 readily ascertainable by inspection of Defendants' employment records.

25 b. Typicality: Plaintiff's claims are typical of all other class members' as
26 demonstrated herein. Plaintiff will fairly and adequately protect the
27 interests of the other class members with whom she has a well-defined
28 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

1 following requirements have been met:

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

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

17 23. On November 6, 2020, Plaintiff provided written notice by online submission to
18 the LWDA and by certified mail to Defendant of the specific provisions of the California
19 Labor Code alleged to have been violated, including the facts and theories to support the
20 alleged violations. Therefore, the administrative prerequisites under California Labor Code
21 section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies,
22 for violations of California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221,
23 222, 223, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198,
24 1199, 2800, and 2802, have been satisfied.

25 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

26 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff and the other class members were entitled to receive
28 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 ///

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

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

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

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

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

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

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

18 **FIRST CAUSE OF ACTION**

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

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

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

25 58. California Labor Code section 1198 and the applicable Industrial Welfare
26 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
27 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
28 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

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

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

5 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

24 70. At all relevant times, the applicable IWC Wage Order and California Labor
25 Code section 512(a) further provide that an employer may not require, cause or permit an
26 employee to work for a work period of more than ten (10) hours per day without providing the
27 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except
28 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.

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.

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.

(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., INSPIRITY 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).

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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'

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

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

6 126. A violation of California Business & Professions Code section 17200, et seq.
7 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
8 policies and practices of requiring employees, including Plaintiff and the other class members,
9 to work overtime without paying them proper compensation violate California Labor Code
10 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring
11 employees, including Plaintiff and the other class members, to work through their meal and
12 rest periods without paying them proper compensation violate California Labor Code sections
13 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate
14 California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and
15 practices of failing to timely pay wages to Plaintiff and the other class members violate
16 California Labor Code sections 201, 202 and 204. Defendants also violated California Labor
17 Code sections 226(a), 1174(d), 2800 and 2802.

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

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

23 129. Pursuant to California Business & Professions Code sections 17200, et seq.,
24 Plaintiff and the other class members are entitled to restitution of the wages withheld and
25 retained by Defendants during a period that commences four years preceding the filing of this
26 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section
27 1021.5 and other applicable laws; and an award of costs.

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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;

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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;

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

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

3 **As to the Ninth Cause of Action**

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

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

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

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

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

12 **As to the Tenth Cause of Action**

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

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

22 55. For the appointment of a receiver to receive, manage and distribute any and all
23 funds disgorged from Defendants and determined to have been wrongfully acquired by
24 Defendants as a result of violation of California Business and Professions Code sections
25 17200, et seq.;

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

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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.

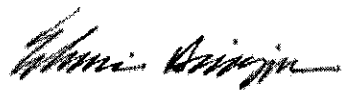
4 **As to the Eleventh Cause of Action**

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.

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12 Dated: January 19, 2021

LAWYERS for JUSTICE, PC

13
14 By: 

15 Edwin Aiwazian
16 Attorneys for Plaintiff
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EXHIBIT B
[PROPOSED] PRELIMINARY APPROVAL ORDER

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**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; INSPERITY
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

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

25 **FINDINGS:**

26 1. Unless otherwise specified, defined terms in this Preliminary Approval and
27 Provisional Class Certification Order have the same definition as the defined terms in the
28 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 *et seq.* ("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.

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9 DATED: _____
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11 JUDGE OF THE SUPERIOR COURT
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EXHIBIT C
NOTICE OF CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

AVIS DAVIS,

v.

Case No. C18-02253

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

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 <u>Section 1</u>), 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].

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

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) [REDACTED].

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 _____. 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 [_____].

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 [_____].

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]

EXHIBIT D
[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF CONTRA COSTA
3

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

7 Plaintiff,

8 v.

9 GROCERY DELIVERY E-SERVICES USA
10 INC. and INSPERITY PEO SERVICES, L.P.,

11 Defendants.

Case No. C18-02253

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

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Action Filed: November 6, 2018

12 On _____, this Court heard the Motion for Final Approval of Class
13 Action Settlement, Attorneys' Fees, Costs, and Enhancement Payments ("Motion for Final
14 Approval") filed by Plaintiff Avis Davis (the "Plaintiff"). This Court reviewed: (a) the motion
15 and the supporting papers, including the Joint Stipulation of Class Action Settlement and Release
16 (the "Agreement," "Settlement," or "Settlement Agreement"); (b) any objections filed with or
17 presented to the Court; (c) the Parties' responses to any objections; and (d) counsels' arguments.
18 Based on this review and the findings below, the Court finds good cause to GRANT the motion.

19 **FINDINGS:**

20 1. Unless otherwise specified, defined terms in this Final Approval Order and
21 Judgment shall have the same definition as used in the Agreement.

22 2. The Court has jurisdiction over the claims of the Class Members asserted in this
23 proceeding and over all parties to the Action.

24 3. The Court finds the Settlement was entered into in good faith, that it is fair,
25 reasonable and adequate, and that it satisfies the standards and applicable requirements for final
26 approval of this class action settlement under California law, including the provisions of
27 California Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769. More
28 specifically, the Court finds that the Settlement was reached following meaningful discovery and

1 investigation conducted by Lawyers *for* Justice, PC ("Class Counsel"); that the Settlement is the
2 result of serious, informed, adversarial, and arms-length negotiations between the parties; and
3 that the terms of the Settlement are in all respects fair, adequate, and reasonable. In so finding,
4 the Court has considered all of the evidence presented, including evidence regarding the strength
5 of Plaintiff's claims; the risk, expense, and complexity of the claims presented; the likely
6 duration of further litigation; the amount offered in the Settlement; the extent of investigation
7 and discovery completed; and the experience and views of Class Counsel. The Court has further
8 considered any objections to and requests for exclusion from the Settlement submitted by Class
9 Members.

10 **4.** With respect to the Settlement Class and for the purpose of approving the
11 Settlement only, this Court finds and concludes that: (a) the Settlement Class Members are
12 ascertainable and so numerous that joinder of all members is impracticable; (b) there are
13 questions of law or fact common to the Settlement Class, and there is a well-defined community
14 of interest among Settlement Class Members with respect to the subject matter of the claims in
15 the Litigation; (c) the claims of Plaintiff are typical of the claims of the Settlement Class
16 Members; (d) Plaintiff has fairly and adequately protected the interests of the Settlement Class
17 Members; (e) a class action is superior to other available methods for an efficient adjudication of
18 this controversy; and (f) the counsel of record for the Plaintiff, i.e., Class Counsel, are qualified
19 to serve as counsel for the Plaintiff in her individual and representative capacity and for the
20 Settlement Class.

21 **5.** The Parties adequately performed their obligations under the Agreement.

22 **6.** Notice was provided to the Class Members in compliance with Section 4 of the
23 Agreement, California Code of Civil Procedure section 382, California Rules of Court 3.766 and
24 3.769, the California and United States Constitutions, and any other applicable law. The Class
25 Notice: (i) fully and accurately informed Class Members about the lawsuit and Settlement;
26 (ii) provided sufficient information so that Class Members were able to decide whether to accept
27 the benefits offered, opt-out and pursue their own remedies, or object to the Class Settlement;
28 (iii) provided procedures for Class Members to submit written objections to the Class Settlement,

1 to appear at the hearing, and to state objections to the proposed Settlement; and (iv) provided the
2 time, date and place of the Final Approval Hearing.

3 7. A full opportunity has been afforded to the Class Members to participate in the
4 Final Approval Hearing, and all Class Members and other persons wishing to be heard have been
5 heard. The Class Members also have had a full and fair opportunity to exclude themselves from
6 the Settlement. Accordingly, the Court determines that all Class Members who did not timely
7 and validly opt out of the Class Settlement ("Settlement Class Member") are bound by this Final
8 Approval Order and Judgment.

9 8. The Gross Settlement Amount and the means of distributing the Net Settlement
10 Amount to Settlement Class Members are fair and reasonable in light of the nature of this case.

11 9. Class Counsel has provided services and benefits to absent Class Members and
12 expended efforts and resources to secure the benefits, and is thus entitled to the requested and
13 unopposed attorneys' fees and costs as ordered by the Court.

14 10. The Class Representative prosecuted this lawsuit, worked with counsel, undertook
15 the risks associated with litigation, acted to protect the Class's interests, and conferred a benefit
16 on absent Class Members, and is thus entitled to receive an enhancement award.

17 11. The designated Settlement Administrator, Simpluris, Inc., rendered services, and
18 will continue to render services, in connection with administering the settlement process, and is
19 thus entitled to its requested administration fees.

20 12. An award of \$192,500 in attorneys' fees (up to 35% of the Gross Settlement
21 Amount or \$192,5000) and \$_____ in costs (up to \$18,000) to Class Counsel is fair
22 and reasonable in light of the nature of this case, Class Counsel's experience and efforts in
23 prosecuting this Action, and the benefits obtained for the Class.

24 13. An enhancement award to Plaintiff in the amount of \$7,500 is fair and reasonable
25 in light of the time and effort spent by Plaintiff in litigating this action as the class representative
26 and Plaintiff's public interest service.

27 14. Payment of \$_____ to Simpluris for its services as the Settlement
28 Administrator is fair and reasonable.

1 **15.** Pursuant to Labor Code Section 2699, subdivision (1)(2), the Court approves of
2 the Settlement's provisions relating to settlement of claims under the Private Attorneys General
3 Act of 2004, Labor Code Section 2698 *et seq.* ("PAGA"). Plaintiff provided a copy of the
4 Agreement to the California Labor and Workforce Development Agency ("LWDA") at the same
5 time that Plaintiff provided it to the Court. Payment of \$50,000 for settlement of any and all
6 claims for which civil penalties under PAGA may be sought or are otherwise available (the
7 "PAGA Penalty Payment") is fair and adequate. The PAGA Penalty Payment satisfies the
8 requirements of Labor Code Section 2699, subdivision (i) because \$37,500 (75%) of the PAGA
9 Penalty Amount is allocated to the LWDA for the enforcement of labor laws and education of
10 employers, and \$12,500 (25%) is allocated to the Net Settlement Amount for distribution to the
11 Settlement Class Members, i.e., the allegedly "aggrieved employees."

12 **IT IS ORDERED THAT:**

13 **1. Class Members.** The Settlement Class Members are defined as: "All current and
14 former non-exempt hourly employees who are or were co-employed by Grocery Delivery and
15 Insperity within the State of California, who have not executed arbitration agreements with class
16 action waivers, at any time during the Class Period." "Class Period" refers to the period of time
17 from November 6, 2014 through _____. Excluded from the Settlement Class
18 are (1) Class Members who submit a timely and valid Request for Exclusion (as defined by the
19 Agreement and paragraph 2 below), (2) individuals co-employed by Grocery Delivery and
20 Insperity working as "Brand Ambassadors" or in other similar positions classified as exempt
21 under the outside sales exemption, and (3) individuals who executed individual separation or
22 severance agreements containing general releases of all claims at the time of their separation
23 from employment with Defendants.

24 **2. Binding Effect of Order.** This order applies to all claims or causes of action
25 settled under the Agreement, including any claims under PAGA, and binds all Class Members.
26 Except with respect to the PAGA Release, this order does not bind persons who filed timely and
27 valid Requests for Exclusion. Attached as "Exhibit A" hereto is a list of persons who properly
28 requested to be excluded from the Settlement. Notwithstanding the submission of any timely

1 and valid Requests for Exclusion, all Class Members are bound by the PAGA Release under
2 this Final Approval Order and Judgment. *See Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

3 **3. Plaintiff's Release.** Plaintiff is deemed to have released and discharged the
4 entities and claims as described in Section 2.8 of the Agreement.

5 **4. Class Member Release.** Upon the Effective Date, Plaintiff and all Settlement
6 Class Members who did not properly request exclusion from the Class Settlement, on behalf of
7 the Releasing Parties, are: (1) deemed to have released and discharged the Released Parties from
8 all Released Claims under the Agreement; and (2) barred and permanently enjoined from
9 asserting, instituting, or prosecuting, either directly or indirectly, these Released Claims against
10 the Released Parties. The full and complete terms of the releases described in this paragraph are
11 set forth in Sections 2.6 and 2.8 of the Agreement. Section 2.8 is applicable only to Plaintiff.

12 **5. PAGA Release.** Upon the Effective Date, Plaintiff and all Class Members shall
13 on behalf of themselves and on behalf of the State of California forever discharge (including
14 waive or release) the Released Parties from any and all claims or action for civil penalties under
15 PAGA during the Class Period, based on or arising out of the factual allegations of the
16 Complaint including, but not limited to, any and all claims under California Labor Code sections
17 201, 202, 203, 204, 210, 218.5, 218.6, 221, 222, 223, 226, 226.7, 510, 512, 551, 552, 1174, 1194,
18 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2800 and 2802. The full and complete terms of the
19 release described in this paragraph are set forth in Section 2.7 of the Agreement.

20 **6. Class Relief.** Individual Settlement Payments shall be mailed to Settlement Class
21 Members within ten (10) business days following the Effective Date in accordance to the
22 instructions and timeline set forth in Section 7 of the Agreement.

23 **7. Attorney's Fees and Costs.** Class Counsel is awarded \$192,500 total in
24 attorneys' fees and \$_____ for reimbursement of litigation costs and expenses. It is
25 hereby ordered by the Settlement Administrator issue payment in the amount of
26 \$_____ to Class Counsel for attorneys' fees and \$7,500 to Class Counsel for
27 reimbursement of litigation costs and expenses according to the terms and timeline set forth in
28 Section 2.2 of the Agreement.

1 **8. Enhancement Award.** Plaintiff is awarded \$7,500 as an enhancement award. It is
2 hereby ordered that the Settlement Administrator issue payment in the amount of \$7,500 to
3 Plaintiff Avis Davis for her enhancement award according to the terms of the Settlement and
4 timeline set forth in Section 2.3 of the Agreement.

5 **9. Payment of Settlement Administration Costs.** Payment of \$ _____
6 shall be made to Simpluris for its services as the Settlement Administrator according to the
7 timeline set forth in the Agreement.

8 **10. PAGA Penalty Payment.** The Settlement Administrator shall distribute the
9 PAGA Penalty Payment as follows: the amount of \$37,500 to the California Labor and
10 Workforce Development Agency, and the amount of \$12,500 to be included in the Net
11 Settlement Amount for distribution to Settlement Class Members, according to the terms and
12 methodology set forth in the Settlement Agreement.

13 **11.** It is hereby ordered that Defendant shall deposit the Gross Settlement Amount
14 into an account established by the Settlement Administrator within five (5) business days after
15 the Effective Date, in accordance with the terms and methodology set forth in the Settlement
16 Agreement.

17 **12.** It is hereby ordered that the Settlement Administrator shall distribute by mail the
18 Individual Settlement Payments to the Settlement Class Members within ten (10) business days
19 following the Effective Date, according to the methodology and terms set forth in the Settlement
20 Agreement.

21 **13.** Individual Settlement Payment checks issued to Settlement Class Members shall
22 be negotiable for at least one hundred eighty (180) calendar days. To remind Settlement Class
23 Members of the time period for negotiating their checks, the Settlement Administrator shall send
24 a postcard to all Settlement Class Members who have not negotiated their Individual Settlement
25 Payment check within ninety (90) calendar days of the mailing of the Individual Settlement
26 Payment check. Settlement Class Members who fail to negotiate their check(s) shall remain
27 subject to the terms of the Settlement and this Final Approval Order and Judgment. The funds
28 associated with any checks that are not timely negotiated will be transmitted to the Unclaimed

1 Property Fund maintained by the State Controller's Office in the Settlement Class Member's
2 name.

3 **14. Final Accounting Report.** After completion of the settlement distribution process
4 and the after the 180-day check cashing deadline, the Parties shall file a report from the
5 Settlement Administrator concerning the amount of money distributed pursuant to the
6 Settlement.

7 **15. Judgment.** The Court finds that there is no reason for delay and directs the Clerk
8 to enter judgment in accordance with the terms of this Order as of the date of this Order.

9 **16. Copy to LWDA.** Within ten (10) days of entry of this Final Approval Order and
10 Judgment, Plaintiff shall provide a copy of this Final Approval Order and Judgment to the
11 LWDA, pursuant to Labor Code Section 2699, subdivisions (1)(3) & (4).

12 **17. Court's Jurisdiction.** Pursuant to the Parties' request, California Code of Civil
13 Procedure section 664.6, and California Rule of Court 3.769(h), the Court retains jurisdiction
14 over this action to construe, interpret, implement, and enforce the Settlement Agreement and this
15 Final Approval Order and Judgment, to hear and resolve any contested challenge to a claim for
16 settlement benefits, and to supervise and adjudicate any dispute arising from or in connection
17 with the distribution of settlement benefits.

18 **18.** Notice of entry of this Final Approval Order and Judgment shall be given to the
19 Class Members by posting a copy of the Final Approval Order and Judgment on Simpluris, Inc.'s
20 website for a period of at least sixty (60) calendar days after the date of entry of this Final
21 Approval Order and Judgment. Individualized notice is not required.

22
23 DATED: _____

24 JUDGE OF THE SUPERIOR COURT
25
26
27
28