

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Selena Matavosian (SBN 348044)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

JUAN JUAREZ PEREZ, 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.

JUPITER, LLC, an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG20084193

Honorable Brad Seligman
Department 23

CLASS ACTION

**DECLARATION OF SELENA
MATAVOSIAN 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 (Juan Juarez
Perez); Declaration of Defendant (Dave
Rowe); and [Proposed] Order filed
concurrently herewith]

Reservation ID: 938893576524
Date: May 2, 2023
Time: 9:15 a.m.
Department: 23

Complaint Filed: December 17, 2020
FAC Filed: January 12, 2021
Trial Date: None Set

DECLARATION OF SELENA MATAVOSIAN

I, Selena Matavosian, 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 Juan Juarez Perez (“Plaintiff”). 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.

EXPERIENCE AND ADEQUACY OF LAWYERS *for* JUSTICE, PC

2. Since October 2008, Lawyers *for* Justice, PC has almost exclusively focused on the prosecution of consumer and employment class actions, involving wage-and-hour claims, race discrimination, unfair business practices, or consumer fraud. Currently, Lawyers *for* Justice, PC is the attorney of record in over a dozen employment-related putative class actions in both state and federal courts in the State of California. Lawyers *for* Justice, PC is comprised of attorneys who focus on litigating complex wage-and-hour class and Private Attorneys General Act (“PAGA”) representative actions. Lawyers *for* Justice, PC has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. During a relatively short time, in association with other law firms, Lawyers *for* Justice, PC has recovered millions of dollars on behalf of thousands of individuals in California. Below is a summary of the experience and qualifications of the attorneys at Lawyers *for* Justice, PC who most recently and primarily have been responsible for the representation of Plaintiff in connection with the resolution of above-captioned matter. Additional attorney and non-attorney staff have also worked on the above-captioned matter.

3. Edwin Aiwazian is the Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has 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, he has previously served as a pro bono mediator for the Los Angeles County Superior

1 Court. In October of 2000, he obtained a Litigation Paralegal Certificate from the UCLA
2 Extension Program. During the summer of 2000, he studied Legal Writing at Harvard University.
3 From approximately September 2002 to approximately December 2002, he served as a Judicial
4 Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the
5 Ninth Circuit. From approximately June 2002 to approximately August 2002, he served as a
6 Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second
7 Appellate District. In December of 2004, he obtained a license to practice law from the California
8 State Bar. From approximately December 2004 to approximately August 2008, he was employed
9 by Girardi & Keese. At Girardi & Keese, his practice focused on class actions and other complex
10 cases involving toxic torts and products liability. In addition, he gained substantial experience on
11 cases involving insurance bad faith, premises liability, and medical negligence. While employed
12 by Girardi & Keese, he argued approximately one hundred (100) motions, took or defended
13 approximately one hundred fifty (150) depositions, and prepared dozens of expert witnesses for
14 deposition or trial. Since in or around October of 2008, through his work at Lawyers *for* Justice,
15 PC, he has almost exclusively focused on the prosecution of consumer and employment class
16 actions, involving wage-and-hour claims, race discrimination, unfair business practices, or
17 consumer fraud. While employed by Lawyers *for* Justice PC, he has argued over one hundred
18 (100) motions, taken or defended over one hundred fifty (150) depositions, prepared dozens of
19 expert witnesses for deposition or trial, and attended over one hundred seventy-five (175)
20 mediations. Together with other attorneys at the firm, and in many cases in conjunction with co-
21 counsel, he has successfully litigated cases involving the executive, administrative, and other
22 overtime exemptions to the State of California and federal overtime compensation requirements.
23 Under his supervision, Lawyers *for* Justice, PC has successfully obtained class certification by
24 contested motion practice in approximately fifteen (15) cases in the last decade, and litigated over
25 1,000 class action or representative action cases.

26 ///

27 ///

28 ///

1 4. Arby Aiwarzian is a Member and Shareholder of Lawyers *for* Justice, PC. He
2 received his Bachelor of Arts degree from University of California, Los Angeles and graduated
3 magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School.
4 From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the
5 Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District.
6 From approximately August 2008 to approximately December 2008 he served as a Judicial Extern
7 to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit.
8 He was admitted to practice law in California in 2010. He is admitted to practice before all courts
9 of the State of California and all United States District Courts in the State of California. He has
10 worked on many wage-and-hour class action and representative action cases, taking the lead in
11 taking and defending depositions, arguing motions, and attending mediations. He has played an
12 integral role in preparing matters for class certification, including and not limited to, successful
13 certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court Case No.
14 BC424012), *Montazemi v. Regus Management* (Los Angeles County Superior Court Case No.
15 BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case No.
16 RG13680477). He has worked on over one hundred (100) class action or representative action
17 cases which have resulted in settlement, including and not limited to those listed in paragraph 7
18 herein.

19 5. Joanna Ghosh is a Senior Member of Lawyers *for* Justice, PC. She received a
20 Bachelor of Arts degree from California State University, Los Angeles in 2006, a Master of
21 Science degree from the London School of Economics in 2007, and a Juris Doctor degree from
22 Georgetown University Law Center in 2010. She is admitted to practice in California (since 2010)
23 and in New York (since 2013) and is also admitted to practice in all U.S. District Courts in
24 California, the U.S. Bankruptcy Court for the Central District of California, and the U.S. Supreme
25 Court. She has taken and defended dozens of depositions and successfully handled motion practice
26 in class action cases regarding discovery (including and not limited to, regarding class contact
27 information), class certification (both contested class certification and stipulated class
28 certification), arbitration agreements, coordination, intervention. She has successfully handled

1 briefing and oral argument on appeal and obtained notable decisions regarding the Private
2 Attorneys General Act and employer efforts to compel arbitration of PAGA claims, e.g., *Roberto*
3 *Betancourt v. Prudential Overall Supply* (Cal., May 24, 2017) 9 Cal.App.5th 439 (Cal. Ct. App.,
4 Mar. 7, 2017), cert. denied, cert. denied (U.S., Dec. 11, 2017) and *ZB, N.A. v. Superior Court*
5 (2019) 8 Cal.5th175. She also has extensive experience with class action and/or representative
6 action settlements. Under her, Edwin Aiwazian, and Arby Aiwazian’s supervision, the firm has
7 handled the class certification and court approval process for hundreds of class action and/or
8 representative action matters that have successfully resolved. She is a member of the California
9 Employment Lawyers Association.

10 6. I am a Member of Lawyers *for* Justice, PC. I received my Bachelor of Science
11 degree from California State University, Northridge in 2019 and earned my Juris Doctor degree
12 from Southwestern Law School in 2022. I was admitted to practice law in California in 2022. I
13 am admitted to practice before all courts of the State of California and all federal district courts in
14 the State of California. I have worked on many wage-and-hour class action and PAGA
15 representative cases, and my work on these cases has included preparing pleadings and motions,
16 making court appearances, and drafting, negotiating, and finalizing settlement agreements.

17 **EXAMPLES OF RESULTS IN WAGE-AND-HOUR CLASS ACTION AND**
18 **REPRESENTATIVE ACTION CASES**

19 7. What follows are just a few examples of the type of results Lawyers *for* Justice, PC
20 (“LFJ”) has achieved on behalf of its clients:

21 a) LFJ, in association with co-counsel therein, represented the plaintiffs in a
22 wage-and-hour class action against a major property management company involving allegations
23 of misclassification of various “manager” positions. On September 20, 2010, the court granted
24 final approval of the class action settlement. The Los Angeles County Superior Court Case
25 Number is BC400414.

26 b) LFJ, in association with co-counsel therein, represented the plaintiffs in a
27 wage-and-hour class action against a national retailer of household items involving allegations of
28 misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court

1 granted final approval of the class action settlement. The Los Angeles County Superior Court
2 Case Number is BC413498.

3 c) LFJ, in association with co-counsel therein, represented the plaintiffs in a
4 wage-and-hour class action against a national property management company involving
5 allegations of misclassification of the “Property Manager” position. On May 23, 2012, the court
6 granted final approval of the class action settlement. The Los Angeles County Superior Court
7 Case Number is BC430918.

8 d) LFJ, in association with co-counsel therein, represented the plaintiffs in a
9 wage-and-hour class action against a national retailer involving allegations of misclassification of
10 the “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
11 certification. On August 26, 2013, the court granted final approval of the class action settlement.
12 The Los Angeles County Superior Court Case Number is BC424012.

13 e) LFJ, in association with co-counsel therein, represented the plaintiff in a
14 wage-and-hour class and PAGA representative action against a bank, involving allegations of
15 misclassification of the “Assistant Branch Manager” position. On August 27, 2013, the court
16 granted final approval of the class and PAGA representative action settlement. The Kern County
17 Superior Court Case Number is S-1500-CV-273194-LHB.

18 f) LFJ, in association with co-counsel therein, represented the plaintiff in a
19 wage-and-hour class and PAGA representative action against a national wholesale distributor of
20 plumbing and builder supplies, involving allegations of misclassification of multiple salaried
21 “manager” positions. On May 22, 2014, the court granted final approval of the class and PAGA
22 representative action settlement. The Sacramento County Superior Court Case Number is 34-
23 2012-00136285.

24 g) LFJ, in association with co-counsel therein, represented the plaintiff in a
25 wage-and-hour class action against a multinational corporation that provides global workplace
26 solutions, involving allegations of misclassification of the “Operations Manager” position. On
27 September 16, 2014, the court granted plaintiff’s motion for class certification. The Los Angeles
28 County Superior Court Case Number is BC478769.

1 h) LFJ, in association with co-counsel therein, represented the plaintiff in a
2 wage-and-hour class and PAGA representative action against a national retailer of household
3 items, on behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted
4 final approval of the class and PAGA representative action settlement. The San Francisco County
5 Superior Court Case Number is CGC-13-532344.

6 i) LFJ, in association with co-counsel therein, represented the plaintiff in a
7 wage-and-hour class and PAGA action involving allegations of misclassification of the salaried
8 residential “Property Manager” position. On September 17, 2015, the court granted plaintiff’s
9 motion for class certification. On October 20, 2017, the court granted final approval of the class
10 and PAGA representative action settlement. The Los Angeles County Superior Court Case
11 Number is BC474784.

12 j) LFJ, in association with co-counsel therein, represented the plaintiffs in a
13 wage-and-hour class and PAGA representative action against a national retailer of upscale
14 hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court
15 granted final approval of the class and PAGA representative action settlement. The Los Angeles
16 County Superior Court Case Numbers are BC516795 and JCCP4794, and the Judicial Council
17 Coordination Proceeding Number is 4794.

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

22 l) LFJ, in association with co-counsel therein, represented the plaintiffs in a
23 wage-and-hour class action against a national retailer of apparel, accessories, and home products,
24 involving allegations of misclassification of the “Department Manager” position. On August 12,
25 2016, the court granted the plaintiffs’ motion for class certification in part and certified a class. On
26 August 6, 2019, the court granted final approval of the class action settlement. The Alameda
27 County Superior Court Case Number is RG13680477.

28 ///

1 m) LFJ represented the plaintiff in a PAGA representative action against a real
2 estate and property management company, on behalf of non-exempt employees. On November 4,
3 2016, the court granted approval of the PAGA representative action settlement. The Orange
4 County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

5 n) LFJ, in association with co-counsel therein, represented the plaintiffs in a
6 wage-and-hour class and PAGA representative action against a full-service bank, on behalf of non-
7 exempt employees. On November 18, 2016, the court granted final approval of the class and
8 PAGA representative action settlement. The San Francisco County Superior Court Case Number
9 is CJC-13-004839 and the Judicial Council Coordination Proceeding Number is 4839.

10 o) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
11 representative action against a foodservice distributor, on behalf of non-exempt employees. On
12 January 26, 2017, the court granted final approval of the class and PAGA representative action
13 settlement. The San Bernardino County Superior Court Case Number is CIVDS1507260.

14 p) LFJ, on behalf of the plaintiff and respondent in a PAGA representative
15 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
16 employer's motion to compel arbitration, which resulted in a published opinion by the California
17 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply* (Cal.
18 App. 4th Dist., Mar. 7, 2017) 9 Cal.App.5th 439, review denied, cert. denied (U.S. Supreme Court
19 Docket No. 17-254). The Riverside County Superior Court Case Numbers are RIC1503952 and
20 RICJCCP5046, and the Judicial Council Coordination Proceeding Number is 5046.

21 q) LFJ, in association with co-counsel therein, represented the plaintiffs in a
22 wage-and-hour class and PAGA representative action against a consumer packaging company, on
23 behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the class
24 and PAGA representative action settlement. The Los Angeles County Superior Court Case
25 Number is BC590429.

26 r) LFJ, in association with co-counsel therein, represented the plaintiffs in a
27 wage-and-hour class and PAGA representative action against a manufacturer of food service
28 industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final

1 approval of the class and PAGA representative action settlement. The Orange County Superior
2 Court Case Number is 30-2015-00810013-CU-OE-CXC.

3 s) LFJ in association with co-counsel therein, represented the plaintiffs in a
4 wage-and-hour class and PAGA representative action against a lumber and hardware company on
5 behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the class
6 and PAGA representative action settlement. The Orange County Superior Court Case Number is
7 30-2014-00747750-CU-OE-CXC.

8 t) LFJ represented the plaintiff in a wage-and-hour class and PAGA
9 representative action against a property management company, on behalf of non-exempt
10 employees. On June 14, 2017, the court granted final approval of the class and PAGA
11 representative action settlement. The Los Angeles County Superior Court Case Number is
12 BC586234.

13 u) LFJ represented the plaintiff in a wage-and-hour class and PAGA
14 representative action against a food company on behalf of non-exempt employees. On June 30,
15 2017, the court granted final approval of the class and PAGA representative action settlement. The
16 Sacramento County Superior Court Case Number is 34-2015-00175871.

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

21 w) LFJ represented the plaintiff in a PAGA representative action, against the
22 parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
23 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
24 Los Angeles County Superior Court Case Number is BC569664.

25 x) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
26 representative action against a manufacturer of plastic containers on behalf of non-exempt
27 employees. On October 31, 2017, the court granted final approval of the class and PAGA
28

1 representative action settlement. The Los Angeles County Superior Court Case Number is
2 BC577233.

3 y) LFJ, in association with co-counsel therein, represented the plaintiffs in a
4 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
5 employees. On December 11, 2017, the court granted final approval of the class and PAGA
6 representative action settlement. The Los Angeles County Superior Court Case Number is
7 BC569646.

8 z) LFJ, in association with co-counsel therein, represented the plaintiffs in a
9 wage-and-hour class and PAGA representative action against a property management company
10 on behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final
11 approval of the class and PAGA representative action settlement. The Los Angeles County
12 Superior Court Case Number is JCCP4819 and the Judicial Council Coordination Proceeding
13 Number is 4819.

14 aa) LFJ, in association with co-counsel therein, represented the plaintiffs in a
15 wage-and-hour class and PAGA representative action against a global provider of flexible office
16 space solutions. On February 15, 2018, the court granted final approval of the class and PAGA
17 representative action settlement. The Los Angeles County Superior Court Case Number is
18 BC498401.

19 bb) LFJ, in association with co-counsel therein, represents the plaintiff in a
20 wage-and-hour class action against a container manufacturer, on behalf of non-exempt employees.
21 On October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
22 County Superior Court Case Number is VCU264528.

23 cc) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
24 representative action against a behavioral health service provider on behalf of non-exempt
25 employees. On November 13, 2018, the court granted final approval of the class and PAGA
26 representative action settlement. The Alameda County Superior Court Case Number is
27 RG16811450.

28 ///

1 dd) LfJ, in association with co-counsel therein, represented the plaintiff in a
2 PAGA representative action against a global provider of products and services to the energy
3 industry, on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the court
4 granted approval of the PAGA representative action settlement. The Kern County Superior Court
5 Case Number is S-1500-CV-280215-SDC.

6 ee) LfJ, in association with co-counsel therein, represents the plaintiff in a
7 wage-and-hour class action against a parking company on behalf of non-exempt employees. On
8 September 3, 2019, the court granted the plaintiff's motion for class certification and certified a
9 class. The Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial
10 Council Coordination Proceeding Number is 4886.

11 ff) LfJ, in association with co-counsel therein, represents the plaintiffs in a
12 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
13 employees. On September 27, 2019, the court granted the plaintiffs' motion for class certification
14 in part and certified a class. The Alameda County Superior Court Case Number is RG15757606
15 and the Judicial Council Coordination Proceeding Number is 4921.

16 gg) LfJ, in association with co-counsel therein, represented the plaintiffs in a
17 wage-and-hour class and PAGA representative action against a national retailer of apparel and
18 fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted
19 the plaintiffs' motion for class certification in part and certified a class. On May 14, 2021, the
20 court granted final approval of the class and PAGA representative action settlement. The
21 Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

22 hh) LfJ, in association with co-counsel therein, represents the plaintiff in a
23 wage-and-hour class and PAGA representative action against a medical equipment supplier on
24 behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion
25 for class certification and certified a class. The San Bernardino County Superior Court Case
26 Number is CIVDS1505744.

27 ///

28 ///

1 ii) LFJ, in association with co-counsel therein, on behalf of the plaintiff and
2 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
3 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
4 notable decision from the California Supreme Court clarifying the law regarding PAGA claims,
5 *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175. On February 21, 2020, the court granted approval
6 of the PAGA representative action settlement. The San Diego County Superior Court Case
7 Number is 34-2015-00175330.

8 jj) LFJ, in association with co-counsel therein, represented the plaintiff in a
9 wage-and-hour class and PAGA representative action against a large national drug testing
10 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
11 plaintiff's motion for class certification and certified a class. On October 28, 2022, the court
12 granted final approval of the class and PAGA representative action settlement. The San Diego
13 County Superior Court Case Number is 37-2018-00019611-CU-OE-CTL.

14 kk) LFJ, in association with co-counsel therein, represents the plaintiffs in a
15 wage-and-hour class and PAGA representative action against a national retailer of sportswear,
16 footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020, the
17 court granted in part the plaintiff's motion for class certification and certified a class. The
18 Riverside County Superior Court Case Numbers are RIC1507504 and RICJCCP4930, and the
19 Judicial Council Coordination Proceeding Number is 4930.

20 ll) LFJ, in association with co-counsel therein, represented the plaintiffs in a
21 wage-and-hour class action against manufacturer and supplier of power products and services on
22 behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion
23 for class certification and certified a class. On August 27, 2021, the court granted final approval
24 of the class action settlement. The San Diego County Superior Court Case Number is 37-2015-
25 00025968-CU-OE-CTL.

26 ///

27 ///

28 ///

mm) LFJ represents the plaintiff in a wage-and-hour class action against a nutritional products manufacturer on behalf of non-exempt production line employees. On December 13, 2021, the court granted the plaintiff's motion for class certification in part and certified a class. The Solano County Superior Court Case Number is FCS051001.

BASIC INFORMATION ABOUT THE CASE AND REACHING THE SETTLEMENT

8. Marked and attached hereto as "**EXHIBIT 1**" is the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, on the one hand, and Defendant Jupiter, LLC ("Defendant"), on the other hand (collectively, the "Parties"). The Parties and their counsel have approved the proposed Notice of Class Action Settlement ("Class Notice"), which is attached to the Settlement Agreement as "**Exhibit A**" and respectfully request that the Court approve it as well.

9. Based on information provided by Defendant, as of January 10, 2022 the Class is estimated to consist of approximately three hundred eighty-five (385) individuals and the PAGA Group Members are estimated to consist of approximately one hundred forty-five (145) individuals.

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

11. Since the above-captioned action was commenced, Plaintiff's Counsel has litigated the case for over two (2) years and was actively preparing the matter for class certification and trial. The Parties have engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq. (the "Mediator"), a well-respected mediator experienced in mediating complex labor and employment matters. In the course of mediation and

1 settlement discussions, the Parties exchanged extensive information and engaged in discussions
2 regarding their evaluations of the case and various aspects of the case, including but not limited
3 to, Defendant's financial condition, the risks and delays of further litigation, the risks to the Parties
4 of proceeding with class certification and/or representative adjudication, the law relating to off-
5 the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and
6 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among
7 other things. During all settlement discussions, the Parties conducted their negotiations at arm's
8 length in an adversarial position. Arriving at a settlement that was acceptable to all Parties was
9 not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at
10 certification, and Plaintiff and Plaintiff's Counsel believed that they would be able to obtain class
11 certification and prevail at trial. After conducting extensive investigations, formal and informal
12 discovery, exchange of information, and settlement negotiations, and with the aid of the
13 Mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given
14 the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides
15 that would attend further litigation. The Settlement is a fair, reasonable, and adequate resolution
16 of the Released Class Claims of Plaintiff and the Participating Class Members and of the Released
17 PAGA Claims of the State of California and PAGA Group Members, against the Released Parties.

18 12. Prior to reaching the Settlement, Plaintiff's Counsel investigated the veracity,
19 strength, and scope of the claims, and was preparing for class certification and trial. Plaintiff's
20 Counsel conducted significant investigation and formal and informal discovery regarding the facts
21 of the case, including and not limited to, the exchange, review, and analysis of a large volume of
22 documents and data obtained from Defendant, Plaintiff, and other sources. Plaintiff's Counsel
23 served multiple sets of formal written discovery requests onto Defendant (specifically, Requests
24 for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Form
25 Interrogatories – General (Set One)) and noticed the depositions of Defendant's Person Most
26 Knowledgeable designees, along with accompanying requests for production of documents. The
27 volume of data and documents that Plaintiff's Counsel reviewed and analyzed included and was
28 not limited to: employment records of Plaintiff, a detailed sampling of Class Members' time and

1 pay data, multiple iterations of Defendant's Employee Handbook, company policy
2 acknowledgments and forms (including, but not limited to, Defendant's Handbook/Policy
3 Employee Acknowledgment, Employee Acknowledgement of Receipt of the Meal Periods Policy
4 and Rest Periods Policy, Employee Acknowledgement of Receipt of the Jupiter Timekeeping
5 Policy, First Meal Period Waiver Form, Second Meal Period Waiver Form, and Meal Break Offer
6 Acknowledgment), employment policies, practices, and procedures (including, but not limited to,
7 Defendant's California Meal Periods Policy and Rest Periods Policy, Overtime Policy, Dress Code
8 Policy, Expenses Policy, and Timekeeping Policy), among other information and documents.
9 Plaintiff's Counsel interviewed Plaintiff and conducted investigations to gather facts and
10 circumstances surrounding Plaintiff and putative class members' employment and to identify
11 potential witnesses. Counsel for the Parties also met and conferred on numerous occasions, e.g.,
12 to discuss issues relating to the pleadings, discovery, and the production of documents and data
13 prior to the mediation. Plaintiff's Counsel also drafted pleadings and the mediation brief and
14 prepared for and attended court proceedings, mediation, and settlement negotiations, among other
15 tasks.

16 13. Counsel for the Parties have also invested time researching and investigating the
17 applicable law, which is often evolving as it relates to certification, representative PAGA claims,
18 off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims
19 and damages, and Defendant's defenses thereto, as well as facts discovered. Based on Plaintiff's
20 Counsel's analysis, the result achieved in this litigation is fair, adequate, and reasonable.

21 14. The Settlement provides for a Gross Settlement Amount of Three Hundred
22 Thousand Dollars and Zero Cents (\$300,000.00). The Net Settlement Amount is the Gross
23 Settlement Amount less the following amounts, subject to approval by the Court: Class Counsel
24 Fees Payment and Litigation Expenses Payment to Class Counsel, Service Payment to Plaintiff,
25 Settlement Administration Expenses to the Settlement Administrator, and the PAGA Payment.
26 Assuming that the amounts allocated under the Settlement toward these payments are awarded by
27 the Court, the Net Settlement Amount that will be available for distribution to Participating Class
28 Members is currently estimated to be Eighty-Six Thousand Five Hundred Dollars and Zero Cents

1 (\$86,500.00). Additionally, 75% of the PAGA Payment (i.e., the LWDA Payment), which is
2 \$45,000.00 out of \$60,000.00, will be distributed to the Labor and Workforce Development
3 Agency (“LWDA”) and 25% of the PAGA Payment (i.e., the PAGA Group Member Amount),
4 which is \$15,000.00 out of \$60,000.00, will be distributed to PAGA Group Members. The Net
5 Settlement Amount will be fully distributed to Participating Class Members and the PAGA
6 Payment will be fully distributed to the LWDA and PAGA Group Members, in accordance with
7 the terms of the Settlement, and there is no reversion to Defendant.

8 15. The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix,”
9 “Settlement Administrator,” or “Administrator”) to handle the notice and settlement
10 administration process. The Parties respectfully request that the Court appoint Phoenix to handle
11 these procedures and serve as the Settlement Administrator. Defendant will provide the Settlement
12 Administrator with a list of Class Members that Defendant will compile from its records, which
13 will include the following information for each Class Member: (1) full name; (2) last known
14 mailing address; (3) Social Security number; (4) start and end dates of employment as a hourly-
15 paid or non-exempt employee for Defendant in California during the Class Period and, if
16 applicable, during the PAGA Period; and (5) such other information and data as necessary for the
17 Settlement Administrator to independently calculate the Workweeks (“Class Data”). The
18 Settlement Administrator will calculate each Class Member’s estimated share of the Net
19 Settlement Amount (“Individual Settlement Share”) and each PAGA Group Member’s estimated
20 share of the PAGA Group Member Amount (“Individual PAGA Payment”). The Settlement
21 Administrator will also receive Requests for Exclusions, objections to the Class Settlement, and
22 Workweek Disputes; provide necessary reports and declarations; calculate, subtract, and transmit
23 necessary taxes and withholdings; prepare and submit informational and other tax filings and
24 documents; issue and transmit all payments provided for by the Settlement, including and not
25 limited to, mailing Individual Settlement Payments to Participating Class Members and Individual
26 PAGA Payments to PAGA Group Members; and perform any other usual and customary duties
27 for administering a class action settlement. Settlement Administration Expenses are currently
28 estimated not to exceed Eleven Thousand Dollars and Zero Cents (\$11,000.00) and will be paid

1 out of the Gross Settlement Amount, subject to approval of the Court.

2 16. Based on investigation and information discovered, Plaintiff's Counsel believes that
3 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
4 that Defendant, with respect to Plaintiff and the Class Members, *inter alia*, failed to properly pay
5 overtime and minimum wages, failed to provide compliant meal and rest periods and to pay
6 associated premium pay, failed to timely pay wages during employment and upon termination of
7 employment, failed to provide compliant wage statements, failed to maintain requisite payroll
8 records, and failed to reimburse necessary business expenses, and thereby engaged in unfair
9 business practices in violation of California Business and Professions Code section 17200, *et seq.*
10 and conduct giving rise to civil penalties recoverable under the Private Attorneys General Act of
11 2004 (California Labor Code sections 2698, *et seq.*). Plaintiff also asserted that Class Members
12 were expected to perform similar job duties and were subject to the same or similar operations and
13 employment policies, practices, and procedures. Additionally, Plaintiff asserted that Defendant's
14 recordkeeping practices with respect to Plaintiff and Class Members were substantially the same
15 during the time period at issue. As a result of said alleged uniform practices, Plaintiff claims that
16 Class Members were not paid all of the compensation that was owed to them by Defendant. Thus,
17 in Plaintiff's Counsel's view, it is clear that the outcome of this litigation would be determined by
18 Defendant's uniform operations and employment practices, policies, and procedures that Plaintiff
19 alleges applied across Defendant's hourly-paid or non-exempt employees in California during the
20 relevant time period.

21 17. Plaintiff's Counsel is aware of the defenses and position of Defendant but believes
22 that Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff and
23 Plaintiff's Counsel have also taken into account the uncertainty and risk of the outcome of further
24 litigation, and the difficulties and delays inherent in such litigation, including those involved in
25 class certification and/or representative adjudication. Plaintiff and Plaintiff's Counsel further
26 recognize the burdens of proof necessary to establish liability for the claims asserted in the lawsuit,
27 Defendant's defenses, and the difficulties in establishing entitlement to monetary recovery.
28 Plaintiff and Plaintiff's Counsel have also considered the Parties' settlement discussions, as well

1 as the evaluations of the Mediator, who is experienced and well-regarded in complex labor and
2 employment matters.

3 18. Defendant, on the other hand, denied and continues to deny any liability and
4 wrongdoing of any kind associated with the allegations in the lawsuit, and further denies that the
5 lawsuit is appropriate for class treatment or representative adjudication for any purpose other than
6 the Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides have
7 also had the opportunity to conduct investigations and gather documents and information relating
8 to Plaintiff's and Class Members' employment with Defendant, and Defendant's operations and
9 employment policies, practices, and procedures. The Parties also reviewed and analyzed a volume
10 of documents and data, including but not limited to a detailed sampling of Class Members' time
11 and pay information, to determine the potential value and strength of the claims. The available
12 information enabled Plaintiff's Counsel to assess and value the class and PAGA claims and
13 prepare violation, damages, and penalties analyses and models. Accordingly, the Parties have
14 conducted adequate investigation and discovery to be sufficiently informed of the nature and
15 extent of the class and PAGA claims, and to enable both sides to fully evaluate the Settlement for
16 its fairness, adequacy, and reasonableness. The Settlement takes into account the strengths and
17 weaknesses of each side's position and the uncertainty of how the case might have concluded at
18 certification, trial, and/or appeals.

19 19. The Settlement Agreement provides for Plaintiff's Counsel to apply for attorneys'
20 fees in an amount of up to thirty-five percent (35%) of the Gross Settlement Amount (i.e.,
21 \$105,000.00) and expenses and costs in an amount not to exceed Thirty Thousand Dollars and
22 Zero Cents (\$30,000.00), which will be paid out of the Gross Settlement Amount, subject to
23 approval by the Court. It should be noted that Plaintiff's Counsel has borne all of the risks and
24 costs of litigation and will not receive any compensation until recovery is obtained.

25 20. The Settlement Agreement provides for payment of up to Seven Thousand Five
26 Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff as a Service Payment, to be paid out of
27 the Gross Settlement Amount, subject to approval by the Court. Plaintiff spent considerable time
28 and effort to produce relevant documents and past employment records and to provide the facts

1 and evidence necessary to attempt to prove the allegations. Plaintiff was available whenever
2 Plaintiff's Counsel needed Plaintiff, and actively tried to obtain and provide information that
3 would facilitate the pursuit of the class and PAGA claims. Accordingly, it is appropriate and just
4 for Plaintiff to receive a Service Payment, in addition to an Individual Settlement Payment and
5 Individual PAGA Payment, for services performed in the matter on behalf of the Class, State of
6 California, and PAGA Group Members.

7 ESTIMATE OF THE VALUE OF THE CLAIMS

8 21. Plaintiff's action alleges that Defendant has violated the California Labor Code and
9 Industrial Welfare Commission Wage Orders by engaging in a uniform policy and systematic
10 scheme of wage abuse against Plaintiff and the putative class members, including *inter alia*, failing
11 to properly compensate overtime and minimum wages, failing to provide compliant meal and rest
12 periods and associated premium pay, failing to timely pay wages during employment, failing to
13 timely pay wages upon termination and associated waiting-time penalties, failing to provide
14 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse
15 necessary business expenses. Plaintiff further contend that Defendant's aforementioned conduct
16 constitutes unfair business practices (under the California Business and Professions Code ("UCL"))
17 and gives rise to civil penalties recoverable under PAGA.

18 22. Based on data provided by Defendant, the total number of putative class members
19 during the period from December 17, 2016 to January 10, 2022 ("relevant time period") was
20 estimated to be approximately three hundred eighty-five (385) individuals who worked a total of
21 nineteen thousand seven hundred ninety-seven (19,797) workweeks with an average hourly rate
22 of pay of fourteen dollars and ninety-three cents (\$14.93).

23 A. Failure to Pay Overtime and Minimum Wages

24 23. Plaintiff alleged Defendant failed to pay overtime and minimum wages. Plaintiff
25 contended that as a result of Defendant's uniform policies, practices, and procedures, putative
26 class members were required to perform work before clocking-in, after clocking-out, and during
27 meal periods. For example, Plaintiff contended that Plaintiff and putative class members were
28 required to perform job duties such as kitchen cleaning, cooking, preparing orders, assisting

1 customers, providing updates to kitchen staff and supervisors, and answering questions outside of
2 their scheduled shifts and during meal periods. Additionally, investigations show that Plaintiff
3 and putative class members would spend several minutes each day donning and doffing their
4 uniforms before and after their scheduled shifts. In fact, Plaintiff contended that Defendant's
5 written policies required employees to be fully dressed in uniforms and prepared to begin work
6 before the start of their shifts. Plaintiff also contended that Defendant exerted class-wide pressure
7 on putative class members to reduce the amount of recorded overtime, requiring them to complete
8 unreasonable workloads within scheduled hours only, obtain pre-approval prior to working
9 overtime or in excess of their scheduled work hours, and subjecting those who recorded overtime
10 without preapproval to discipline. Plaintiff further contended that Defendant incorrectly calculated
11 the regular rate of pay for purposes of calculating overtime compensation by failing to include
12 non-discretionary forms of pay in its regular rate calculations. Plaintiff contended that Defendant
13 failed to properly compensate Plaintiff and putative class members at their applicable minimum,
14 regular, or overtime rates for all of the hours that they worked.

15 24. California Labor Code section 510 provides that when an employee works more than
16 eight (8) hours in any workday, more than forty (40) hours in any workweek and/or more than six
17 (6) days in a workweek, the employer must pay the employee at least one and one-half times the
18 employee's regular rate of pay for all overtime hours worked. The employer must pay the
19 employee no less than twice his or her regular rate of pay for hours worked in excess of twelve
20 (12) hours in one day or in excess of eight (8) hours on the seventh consecutive day of work.
21 California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC")
22 Wage Order(s) provide that it is unlawful to employ persons without compensating them at a rate
23 of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
24 number of hours worked by the person on a daily or weekly basis.

25 25. California Labor Code section 1197 provides that it is unlawful to pay employees at
26 a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and
27 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action, as
28 well as liquidated damages in an amount equal to the wages unlawfully not paid and interest

1 thereon. California Labor Code section 1197.1 provides for civil penalties, which, arguably, may
2 only be recovered by the Labor Commissioner during a one-year statute of limitations period.

3 26. Defendant contended, *inter alia*, that its overtime policies and practices comply with
4 the law, and that it paid putative class members over the California minimum wage for all hours
5 worked. Defendant contended that it correctly calculated and paid putative class members' regular
6 rate for purposes of paying overtime. Defendant also produced wage statements reflecting
7 overtime compensation paid to many of the putative class members (including, and not limited to,
8 Plaintiff). Defendant further contended that all employees were required to record all time worked
9 and were given the opportunity to make any necessary timecard revisions or changes, and that
10 Defendant was not aware that any work had been performed off-the-clock. Defendant also argued
11 that individual liability issues predominate, including: (a) whether each employee worked off-the-
12 clock; (b) whether Defendant knew or should have known about each employee's off-the-clock
13 work; (c) whether each employee worked overtime; (d) whether Defendant knew or should have
14 known that each putative class member performed overtime work. Defendant also contended that
15 the putative class members held different job titles and had different job duties and that these
16 circumstances would raise highly individualized questions of fact and would pose challenges to
17 certification and the merits of the claims for overtime and minimum wages.

18 27. Plaintiff's Counsel considered information obtained through investigations and from
19 Plaintiff and other putative class members, as well as class data provided by Defendant, and
20 created damages/valuation models prior to the mediation. Based thereon, assuming that it could
21 be proven that Defendant failed to pay one (1) hour of overtime wages every workweek during the
22 relevant time period, the potential value of this claim was estimated to be \$443,452.80 (19,797
23 workweeks x 1 hour of overtime wages x overtime hourly rate of \$22.40, which is based on the
24 average hourly rate of \$14.93). Assuming that it could be proven that Defendant failed to pay one
25 (1) hour of minimum wages every workweek during the relevant time period, the potential value
26 of this claim was estimated to be \$295,569.21 (19,797 workweeks x 1 hour of unpaid minimum
27 wages x average hourly rate of \$14.93).

28 ///

28. However, this assumes an exposure based on a class having been certified and Plaintiff having proven all elements of the overtime and minimum wage claims, despite risks associated with obtaining and maintaining certification, risks to establishing liability, and significant additional costs that would have to be incurred in order to certify a class and establish liability. Plaintiff also faced the risk of the Court finding that individualized issues predominate, such that class treatment is not suitable. While Plaintiff's Counsel disagreed with Defendant's arguments and factual contentions, Plaintiff's Counsel recognized the circumstances and realities of the case, applicable case law and regulations, the costs and expenses of further litigation and certification, and risks to recovery, and applied appropriate discounts for them. With respect to the overtime claim, at this juncture, a discount of 30% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$310,416.96), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$155,208.48), and a discount of 60% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$62,083.39). Also, with respect to the minimum wage claim, at this juncture, a discount of 30% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$206,898.45), a discount of 40% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$124,139.07), and a discount of 60% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$49,655.63).

B. Failure to Provide Compliant Meal Periods and Associated Premiums

29. Plaintiff's theory of liability was also based on Defendant's failure to provide timely, full, and/or uninterrupted meal periods. Plaintiff contended, *inter alia*, that Defendant's policies, practices, and procedures required employees to perform job duties during their meal periods and prevented them from regularly receiving compliant meal periods. For example, Plaintiff and other putative class members regularly suffered short, late, or missed meal periods due to severe

1 understaffing, heavy workloads, and high customer service standards. Plaintiff also contended
2 that Plaintiff and other putative class members were required to work through meal periods on a
3 regular basis to complete assigned kitchen duties or prepare orders. Investigations show that when
4 Plaintiff and other putative class members were able to take a meal period, the meal periods only
5 lasted approximately fifteen (15) to twenty (20) minutes in length. Based on Class Counsel's
6 review and analysis, approximately 78.35% of shifts analyzed were eligible for a first or second
7 daily meal period (of which 86.24% of shifts analyzed were shifts of a length that only entitled
8 class members to one (1) daily meal period and 2.86% of all shifts analyzed had were of a length
9 that entitled class members to two (2) daily meal periods). Also, approximately 5.65% of meals
10 analyzed were exactly 30 minutes or 60 minutes in duration. Additionally, investigations show
11 that a majority of records prior to August 2020 fail to evidence a recorded meal period entry.
12 Instead, Defendant would only record the start and end times and the total daily hours worked by
13 the employee. Further, investigations show that Defendant's time and pay records fail to evidence
14 all requisite meal premiums paid for missed, short, late, and/or interrupted meal periods during the
15 relevant time period.

16 30. Under California law, an employer must provide an employee with uninterrupted
17 meal periods of not less than thirty (30) minutes before the employee works more than five (5)
18 hours, except that if the total work period per day of the employee is no more than six (6) hours,
19 the meal period may be waived by mutual consent of both the employer and employee. Cal. Lab.
20 Code § 512(a). A second meal period of not less than thirty (30) minutes is required if an employee
21 works more than ten (10) hours per day, except that if the total hours worked is no more than
22 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
23 employee only if the first meal period was not waived. *Id.* An "on-duty" meal period may be
24 agreed to only if "the nature of the work prevents an employee from being relieved of all duty and
25 when by written agreement between the parties an on-the-job paid meal period is agreed to." IWC
26 Wage Orders 1 through 15, § 11; IWC Wage Order 16, § 10. An employer must pay each
27 employee to whom it fails to "provide" a meal period one hour of wages at his or her regular rate
28 of pay "for each work day that the meal or rest period is not provided." Cal. Lab. Code § 226.7(b).

1 31. Defendant contended that it had practices, policies, and procedures to provide meal
2 periods every workday to its employees that fully complied with California law. To the extent
3 that putative class members failed to take their meal periods or took a short or late meal, Defendant
4 contended that they did so voluntarily and that all applicable meal periods were still provided to
5 them. Thus, Defendant argued that it did not act unlawfully to deprive putative class members of
6 meal periods. Defendant produced signed Acknowledgement Forms and contended that these
7 forms were available for employees to sign that stated they were afforded the option to take a
8 compliant meal period. Defendant also produced wage statements reflecting meal period
9 premiums paid to putative class members. Defendant also contended that it obtained meal period
10 waivers from many of the putative class members. Defendant further contended that there were
11 multiple individual issues that would pose challenges to certification, including and not limited to,
12 (a) whether any meal periods were non-compliant, and (b) why they were non-compliant.
13 Defendant also contended that the putative class members held different job titles and had different
14 job duties, and that as a result, there was variation to the circumstances that could allegedly cause
15 the employees to be deprived of the opportunity to take legally-compliant, duty-free meal periods,
16 and this variation in circumstances raised highly individualized questions of fact.

17 32. Plaintiff's Counsel considered information obtained through investigations and from
18 Plaintiff and other putative class members, as well as class data provided by Defendant, and
19 created damages/valuation models prior to the mediation. Based thereon, assuming that it could
20 be proven that four (4) meal premiums are due for every workweek during the relevant time period,
21 the potential value of this claim was estimated to be \$1,182,276.84 (19,797 workweeks x 4 meal
22 premiums x average hourly rate of \$14.93).

23 33. Plaintiff's Counsel also considered the risk of further litigating the case, including
24 the significant additional costs that will be incurred by both sides if the case does not settle, as
25 litigating a class action through class certification, trial, and/or appeals is very expensive.
26 Moreover, litigating meal period claims is inherently difficult as an employer's records, as is the
27 case here, do not usually indicate when a meal period is missed, late, short and/or interrupted.
28 While Plaintiff's Counsel disagreed with Defendant's arguments and factual contentions,

1 Plaintiff's Counsel recognized the circumstances and realities of the case, applicable case law and
2 regulations, costs and expenses of further litigation and certification, and risks to recovery, and
3 applied appropriate discounts for them. At this juncture, a discount of 30% was applied to account
4 for the risks associated with obtaining and maintaining certification (bringing the value of the
5 claim closer to \$827,593.79), a discount of 50% was applied to account for the risks associated
6 with succeeding on the merits and establishing liability (bringing the value of the claim closer to
7 \$413,796.90), and a discount of 60% was applied to account for the risks associated with proving
8 the extent of damages and obtaining an award thereof (bringing the value of the claim closer to
9 \$165,518.76).

10 **C. Failure to Provide Compliant Rest Periods and Associated Premiums**

11 34. Plaintiff's theory of liability was also based on Defendant's failure to provide its
12 employees with timely, full, and/or uninterrupted rest periods. Plaintiff contended that
13 Defendant's employment policies, practices, and procedures required employees to perform job
14 duties during their rest periods and prevented them from regularly receiving compliant rest
15 periods. Plaintiff also contended that he and other putative class members were required to remain
16 on premises during rest periods and that Defendant failed to pay a rest period premium at any time
17 during the relevant time period.

18 35. California law requires an employer to provide rest periods to all employees at the
19 rate of ten (10) minutes every four hours of work or major fraction thereof. Cal. Lab. Code
20 § 226.7. When an employer fails to provide a compliant rest period, the employer is required to
21 either (a) provide another rest period or (b) pay one additional hour of pay at the regular rate of
22 pay "for each work day that the meal or rest period is not provided." *Augustus v. ABM Security*
23 *Services, Inc.* (2016) 2 Cal.5th 257, 271-72; Cal. Lab. Code § 226.7(b). However, employees are
24 exempt from the rest breaks law, if their duties and responsibilities qualify for one or more of the
25 exemptions under California or federal law. See Cal. Lab. Code § 226.7(e); see e.g., 49 CFR
26 § 395.

27 ///

28 ///

1 36. Defendant contended that it had methods, policies, and procedures to provide all
2 applicable rest periods every workday to putative class members that fully complied with the law.
3 Defendant argued that the reasons why a putative class member failed to receive a compliant rest
4 period raised individual issues that could not be certified.

5 37. Plaintiff's Counsel considered information obtained through investigations and from
6 Plaintiff and other putative class members, as well as class data provided by Defendant, and
7 created damages/valuation models prior to the mediation. Based thereon, assuming that it could
8 be proven that one (1) rest period premium is due for every workweek during the relevant time
9 period, the potential value of this claim was estimated to be \$295,569.21 (19,797 workweeks x 1
10 rest period premium x average hourly rate of \$14.93).

11 38. Plaintiff's Counsel also considered the risk of further litigating the matter, as well
12 as significant additional costs that will be incurred by both sides if the case does not settle, as
13 litigating a class action through class certification, trial, and/or appeals is very expensive.
14 Moreover, litigating rest period claims is inherently difficult as an employer's records, as is the
15 case here, do not usually indicate when a rest period is short, late, interrupted or missed entirely.
16 While Plaintiff's Counsel disagreed with Defendant's arguments and factual contentions,
17 Plaintiff's Counsel recognized the circumstances and realities of the case, applicable case law and
18 regulations, the costs and expenses associate with further litigation and certification, and risks to
19 recovery, and applied appropriate discounts for them. At this juncture, a discount of 30% was
20 applied to account for the risks associated with obtaining and maintaining certification (bringing
21 the value of the claim closer to \$206,898.45), a discount of 60% was applied to account for the
22 risks associated with succeeding on the merits and establishing liability (bringing the value of the
23 claim closer to \$82,759.38), and a discount of 60% was applied to account for the risks associated
24 with proving the extent of damages and obtaining an award thereof (bringing the value of the claim
25 closer to \$33,103.75).

26 ///

27 ///

28 ///

D. Waiting-Time Penalties for Failure to Timely Provide Wages During Employment and Upon Termination

39. Labor Code section 204 provides that, unless an exemption applies (e.g., under California Labor Code section 204(a)), wages (other than those wages due upon termination of an employee) earned by an employee between the 1st and 15th days, inclusive, of any calendar month, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and wages earned by an employee between the 16th and the last day, inclusive, of any calendar month, are due and payable between the 1st and the 10th day of the following month. Under California Labor Code section 210, either a statutory penalty or a civil penalty through PAGA may be recovered for a violation of California Labor Code section 204, but not both. Therefore, the value of this claim is considered as a part of the valuation of the PAGA claim set forth below.

40. 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. If an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours of quitting, unless the employee has given seventy-two (72) hours of notice of his or her intention to quit, in which cases the employee is entitled to his or her wages at the time of quitting.

41. California Labor Code section 203 provides that if an employer fails to pay an employee all wages due at termination or within seventy-two (72) hours of resignation, in accordance with sections 201 and 202, then that employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. California Labor Code section 203 further provides that the statute of limitations to recover the penalty is the same as the statute of limitations for recovery of the unpaid wages from which the penalties arise, i.e., three years.

42. Plaintiff alleged that Defendant intentionally and willfully failed to pay Plaintiff and the other putative class members all wages due to them upon termination, within the time period permissible under California law. For example, Plaintiff alleged that putative class members are

1 entitled to unpaid wages arising from, *inter alia*, off-the-clock work, as well as meal and rest
2 period premiums, thereby triggering waiting-time penalties under California Labor Code section
3 203.

4 43. Based on information and data provided by Defendant, it was estimated that
5 approximately two hundred forty-three (243) putative class members had been terminated during
6 the three-year statute of limitations (i.e., from December 17, 2017). Assuming that these
7 individuals were not timely paid all wages due to them upon termination, the potential value of
8 waiting-time penalties claim was estimated to be \$870,717.60 collectively (243 individuals x [30
9 days x hourly rate of \$14.93 x 8 hours]), or approximately \$3,583.20 per individual. However,
10 this presumes that Plaintiff would prevail on the underlying California Labor Code claims, which
11 is necessary to show that Defendant failed to timely pay wages that were due to the putative class
12 members upon termination.

13 44. Defendant was adamant that no waiting-time penalties should be awarded.
14 Defendant pointed out that waiting-time penalties are derivative of each and every other
15 underlying alleged California Labor Code violations and contended that it paid the terminated
16 employees all wages due and owing. Moreover, Defendant emphasized that, under California
17 Labor Code section 203, employers are only obligated to pay waiting-time penalties if they
18 “willfully” fail to pay wages due and owing at the time of termination or resignation. As Title 8,
19 California Code of Regulations, section 13520 states,

20 A willful failure to pay wages within the meaning of Labor Code
21 Section 203 occurs when an employer intentionally fails to pay wages
22 to an employee when those wages are due. However, a good faith
23 dispute that any wages are due will preclude imposition of waiting
24 time penalties under Section 203.

25 A “good faith dispute” that any wages are due occurs when an
26 employer presents a defense, based in law or fact, which, if successful,
27 would preclude any recovery on the part of the employee. The fact
28 that a defense is ultimately unsuccessful will not preclude a finding
that a good faith dispute did exist. Defenses presented which, under
all the circumstances, are unsupported by any evidence, are
unreasonable, or are presented in bad faith, will preclude a finding of
a “good faith dispute.”

///

///

1 45. Accordingly, to assess the likely recovery of waiting-time penalties, Plaintiff's
2 Counsel also took into consideration the chances of prevailing on each of the underlying causes of
3 action, as well as the additional hurdles of prevailing on the claim for waiting-time penalties,
4 including the inherent difficulty in proving the "willful" prong of section 203, applicable case law,
5 costs and expenses associated with further litigation and certification, the circumstances and
6 realities of the case, and risks to recovery, and applied appropriate discounts for them. At this
7 juncture, a discount of 40% was applied to account for the risks associated with obtaining and
8 maintaining certification (bringing the value of the claim closer to \$522,430.56), a discount of
9 60% was applied to account for the risks associated with succeeding on the merits and establishing
10 liability (bringing the value of the claim closer to \$208,972.22), and a discount of 60% was applied
11 to account for the risks associated with proving the extent of damages and obtaining an award
12 thereof (bringing the value of the claim closer to \$83,588.89).

13 **E. Wage Statement Violations**

14 46. Plaintiff also alleged that, for example, by failing to account for all time worked and
15 pay all wages due, Defendant violated California Labor Code section 226(a) which states that an
16 employer must provide an accurate and itemized wage statement twice a month or each time wages
17 are paid, whichever is the more frequent. Failure to do so entitles employees to recover the greater
18 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
19 and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
20 aggregate penalty of four thousand dollars (\$4,000). See Cal. Lab. Code § 226(e). Arguably,
21 actual damages may be sought, under a three-year statute of limitations, or, statutory penalties may
22 be sought, under a one-year statute of limitations.

23 47. Based on information and data reviewed and analyzed, it is estimated that
24 approximately one hundred forty (140) putative class members worked during the one-year
25 statutory limitations period (i.e., from December 17, 2019 to January 10, 2022), and that these
26 putative class members worked a total of two thousand three hundred thirty-six (2,336) pay
27 periods. Based on Plaintiff's Counsel's investigations and analysis, it was determined that the
28 estimated potential value of this claim is \$226,600.00 ([\$50 initial penalty x 140 initial violations])

1 + [\$100 subsequent penalty x (2,336-140) subsequent violations]).

2 48. Defendant contended that Plaintiff and putative class members suffered no actual
3 injury from the alleged wage statement violations. Defendant also contended that this alleged
4 violation is entirely derivative of the foregoing allegations. In other words, Plaintiff would have
5 to prove, for example, that off-the-clock work occurred, that overtime was worked, that all hours
6 of work had not been properly recorded and compensated, and/or that non-compliant meal and rest
7 periods occurred and that Defendant did not pay premiums, etc., to demonstrate that the wage
8 statements were inaccurate. Defendant further contended, *inter alia*, that if off-the-clock and/or
9 overtime work occurred and was not reflected in the wage statements, it was because the work
10 was hidden from Defendant. Defendant also contended that no actual injury can be shown. When
11 assessing the value of this claim, Plaintiff's Counsel considered these factors, the derivative nature
12 of this alleged violation, the chances of prevailing on each of the underlying causes of action,
13 applicable case law and regulations, costs and expenses associated with further litigation and
14 certification, realities of the case, and risks to recovery, and applied appropriate discounts for them.
15 At this juncture, a discount of 40% was applied to account for the risks associated with obtaining
16 and maintaining certification (bringing the value of the claim closer to \$135,960.00), a discount
17 of 50% was applied to account for the risks associated with succeeding on the merits and
18 establishing liability (bringing the value of the claim closer to \$67,980.00), and a discount of 50%
19 was applied to account for the risks associated with proving the extent of damages and obtaining
20 an award thereof (bringing the value of the claim closer to \$33,990.00).

21 **F. Failure to Maintain Requisite Payroll Records**

22 49. Plaintiff alleged that Defendant had intentionally and willfully failed to keep
23 accurate and complete payroll records showing the hours worked daily by, and the wages paid to,
24 Plaintiff and the putative class members, for example, by failing to account for all time worked by
25 and pay all wages due to Plaintiff and putative class members. Plaintiff also alleged that
26 Defendant's intentional and willful failure to keep accurate payroll records violated the statutorily-
27 protected right to accurate and complete payrolls records, and that Plaintiff and the putative class
28 members have suffered injury and damage as a result.

1 50. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
2 central location in the state or at the plants or establishments at which employees are employed,
3 payroll records showing the hours worked daily by and the wages paid to, and the number of piece-
4 rate units earned by and any applicable piece rate paid to, employees employed at the respective
5 plants or establishments. These records must be kept in accordance with rules established for this
6 purpose by the Labor Commissioner, but in any case, shall be kept on file for not less than three
7 years. Under California Labor Code section 1174.5, a willful violation of the employer's
8 recordkeeping obligations set forth in Labor Code 1174(d) is subject to a civil penalty of \$500.
9 Arguably, however, this civil penalty would only be recoverable by the Labor Commissioner,
10 however, Plaintiff assert a cause of action under PAGA. Therefore, the value of this claim is
11 considered as a part of the valuation of the PAGA claim contained *infra*.

12 51. Defendant contended that Plaintiff and putative class members suffered no actual
13 injury or damage from the alleged recordkeeping violations. Moreover, Defendant challenged
14 certification of the recordkeeping issue on the basis that individual liability issues predominated,
15 including (a) whether each putative class member's payroll records were not maintained properly,
16 and (b) whether Defendant's alleged failure to keep requisite payroll records was "willful." Like
17 the wage statement violations, this cause of action is entirely derivative of the causes of action for
18 failure to pay overtime and minimum wages and failure to provide compliant meal and rest
19 periods.

20 52. However, the valuation of this claim assumed that Plaintiff would be able to prove
21 that all hours of work had not been recorded and compensated properly and accurately, that non-
22 compliant meal and rest breaks did occur, but Defendant did not provide premium pay for them,
23 etc., in order to demonstrate that Defendant failed to maintain accurate and complete payroll
24 records.

25 53. As such, when assessing the value of this claim, Plaintiff's Counsel took the
26 foregoing factors into account, as well as Defendant's defenses and contentions, the derivative
27 nature of this cause of action, the chances of prevailing on the other causes of action, the inherent
28 difficulty in proving the "willful" prong of California Labor Code section 1174.5, applicable case

1 law, costs and expenses of further litigation and certification, and risks to recovery and applied
2 appropriate discounts for settlement purposes.

3 **G. Unreimbursed Business Expenses**

4 54. Plaintiff contended that Defendant failed to reimburse Plaintiff and other putative
5 class members for necessary business expenses, including but not limited to, costs for usage of
6 personal cell phones.

7 55. California Labor Code section 2802 requires an employer to indemnify its
8 employees for all necessary expenditures made by the employee in direct consequence of the
9 discharge of his or her duties, or of his or her obedience to the directions of the employer.

10 56. Defendant contended that it has a policy and practice of reimbursing employees for
11 necessary business-related expenses. Defendant also contended that, with respect to the alleged
12 expenses for which Plaintiff and other putative class members never requested reimbursement
13 from Defendant, Defendant did not know and had no reason to know that the alleged business-
14 related expenses were incurred. Defendant further contended that the reason for why a putative
15 class member undertook certain expenses, while not others, and failed to receive reimbursement
16 for certain expenses while not others, would raise individual issues that could not be certified.

17 57. Defendant also contended that the California Labor Code only requires
18 reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course
19 of performing work—and argued that distinguishing a necessary expense from an unnecessary one
20 would require individualized inquiry. See, Cal. Lab. Code § 2802; Gattuso v. Harte-Hanks
21 Shoppers, Inc. (2007) 42 Cal.4th 554. Furthermore, whether or not an expense was necessary,
22 would depend, in part, on the reasonableness of the employee’s choice, and whether or not an
23 expense was incurred, would have to be established by way of extensive individual factual inquiry
24 and/or statistical evidence. Cochran v. Schwan’s Home Services, Inc. (2014) 228 Cal.App.4th
25 1137.

26 58. If Plaintiff proved that Defendant willfully failed to reimburse necessary business-
27 related expenses to putative class members in the amount of four dollars (\$4) each per workweek
28 during the relevant time period, the potential value of this claim would be \$79,188.00 (2,336 total

workweeks x \$4 business expenses). Plaintiff's Counsel also took into consideration that, not only would it have to be established that expenses were incurred, but also that the nature of the expenses were such that Defendant was required to reimburse them. While Plaintiff's Counsel disagreed with Defendant's arguments and factual contentions, Plaintiff's Counsel considered Defendant's arguments, applicable case law and regulations, the costs and expenses associated with further litigation and certification, the circumstances and realities of the cases, and risks to recovery, and applied appropriate discounts for them. At this juncture, a discount of 40% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$47,512.80), a discount of 40% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$28,507.68), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$14,253.84).

H. Unfair Business Practices

59. Plaintiff asserted a cause of action for Defendant's alleged violation of the California's Unfair Competition Law, Business and Professions sections 17200, et seq. ("UCL") which prohibits any "unlawful, unfair or fraudulent business practices." A violation of the UCL may be predicated on the violation of any law.

60. Arguably, California Business and Professions Code section 17208 extends the statute of limitations on Plaintiff's other allegations, which qualify as unfair business practices, to four (4) years. However, claims brought under the UCL are equitable actions for injunctive or restitutionary relief, and a court may take into consideration equitable defenses when fashioning equitable remedies. Restitution under the UCL is limited to returning to Plaintiff and putative class members monies unlawfully withheld, such as unpaid wages or unpaid meal or rest period premiums, or restitutionary disgorgement.

61. Plaintiff contended that each of Defendant's alleged violations of the California Labor Code constitute business practices that are either unlawful (i.e., is forbidden by law) and/or unfair (i.e., harm to victim outweighs any benefit). In order to prevail on the UCL cause of action,

1 Plaintiff would have to prove that Defendant violated the predicate provisions of law, and that the
2 violations constitute unlawful and/or unfair business acts and practices in violation of California
3 Business and Professions Code sections 17200, et seq. Plaintiff would have to prove that
4 Defendant's conduct throughout the time period at issue has been unfair, unlawful, harmful, and
5 injurious to Plaintiff and putative class members. With respect to the UCL's standing requirement,
6 Plaintiff would also have to prove that he suffered an economic injury as a result of Defendant's
7 conduct.

8 62. As discussed above, Defendant vigorously challenged the likelihood of Plaintiff's
9 success in establishing that any of provisions of the California Labor Code, on which the UCL
10 claim is predicated, were violated and that such violations were injurious. Throughout this
11 litigation, Defendant also relentlessly challenged Plaintiff's standing and adequacy to assert class
12 claims and contended there were individualized issues that would pose challenges to certification.
13 When assessing the likelihood of prevailing on this cause of action, Plaintiff's Counsel considered
14 all of the above, as well as Defendant's factual contentions and legal arguments, the chances of
15 prevailing on the other causes of action, costs and expenses associated with further litigation and
16 certification, and risks to recovery, and applied appropriate discounts for settlement purposes.

17 **I. PAGA Penalties**

18 63. Under the PAGA, as amended, California Labor Code sections 2698, *et seq.*, civil
19 penalties that may be assessed and collected by the state labor agency, for a violation of the
20 California Labor Code, may, as an alternative, be recovered by an aggrieved employee plaintiff.
21 If the California Labor Code already specifies and provides a civil penalty for the violation of a
22 provision of the California Labor Code, said civil penalty is recoverable by the aggrieved
23 employee plaintiff. Additionally, the PAGA statute establishes a civil penalty that is recoverable
24 by an aggrieved employee plaintiff, for violation of provisions of the California Labor Code for
25 which the California Labor Code does not specifically provide for a civil penalty, as follows: one
26 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
27 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
28 violation. Cal. Lab. Code § 2699(f). Pursuant to California Labor Code section 2699(i), seventy-

1 five percent (75%) of the penalties recovered are to be allocated to the State of California, with
2 the remaining twenty-five percent (25%) allocated to the aggrieved employees. The statute of
3 limitations period applicable to such penalties is one year prior to the filing of the complaint. Cal.
4 Civ. Proc. Code § 340.

5 64. Defendant contended that violations of multiple provisions of the California Labor
6 Code do not give rise to cumulative penalties, but that instead, the initial violation penalty and
7 subsequent violation penalty provided by statute, should only apply once per pay period, if at all,
8 rather than cumulatively for each separate California Labor Code provision that is, arguably,
9 violated during a pay period.

10 65. Defendant also contended that an important feature of the PAGA statute is that,
11 when determining whether or not to assess a penalty, the court exercises the same discretion that
12 the Labor Commissioner has, and may reduce the penalties to be assessed against the employer
13 pursuant to California Labor Code section 2699(e)(1)-(2). As such, Defendant contended that,
14 with respect to a PAGA claim, the Court was unlikely to assess cumulative penalties for the
15 maximum number of possible, separate California Labor Code violations, because it would be
16 unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be
17 governed by multiple provisions of the California Labor Code that are interrelated and work in
18 tandem.

19 66. Defendant also maintained and continue to maintain that it had legally-compliant
20 employment policies and practices throughout the statutory period. Defendant denied and
21 continues to deny that it ever violated any provision of the California Labor Code and argued, that,
22 even if, *arguendo*, such violations occurred, Defendant will not be treated as having engaged in
23 subsequent violations giving rise to heightened penalties. In other words, Defendant argued that
24 heightened civil penalties for subsequent violations would not be assessed unless it could be shown
25 that Defendant had notice that it was violating the law, e.g., because they had been cited by a labor
26 agency or adjudged by a court to have done so. See, e.g., *Amaral v. Cintas Corp. No. 2* (2008)
27 163 Cal.4th 1157, 1209. Defendant argued that it would be able to show a lack of willfulness in
28 the violations, such that the alleged California Labor Code violations would not be considered

1 “willful.” Defendant contended that, at best, even if a violation giving rise to a penalty was shown
2 for each pay period, only the lower civil penalty associated with initial violations would apply.

3 67. Importantly, to prevail on the PAGA claim, Defendant contended that some courts
4 have required plaintiffs to show at the outset that they have suffered injury, in order to establish
5 standing, and that Plaintiff would also have to prove all requisite elements to prove violations of
6 the underlying California Labor Code provisions, in order to show that Defendant’s conduct gives
7 rise to penalties. The overtime and meal and rest period allegations are fundamental to this action;
8 however, for the reasons discussed above, there were substantial challenges to showing liability
9 and exposure for these claims. Defendant argued that Plaintiff would not be able to establish
10 violations of the underlying California Labor Code provisions and the fundamental allegations
11 regarding overtime and meal and rest periods. Defendant also contended that multiple
12 individualized issues vitiated the manageability of representative adjudication of PAGA penalties.

13 68. Defendant would also likely seek bifurcation of discovery and/or trial of the PAGA
14 claim—multiple courts have taken such an approach.

15 69. Defendant also maintained that, in addition to its strong arguments against the
16 underlying claims, taking the current unsettled state of law, it would be unjust to award the
17 maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials
18 and/or assessment of penalties under the PAGA statute, and there is no clearly-established
19 methodology for the valuation and/or assessment of PAGA penalties.

20 70. Defendant also contended that, before a PAGA claim could be tried, under existing
21 law, the court of law would have to be satisfied that the adjudication of the PAGA claim, based
22 on a theory of uniform wage and hour practices relating to a large group of aggrieved employees,
23 is sufficiently “manageable” so as not to interfere with Defendant’s right to due process.
24 Defendant alleged that the putative class members’ job titles, job duties, and locations varied.
25 Defendant contended that there was variation as to the circumstances that could allegedly cause
26 the employees to work overtime or to be deprived of the opportunity to take legally-compliant,
27 duty-free meal and/or rest periods. Defendant further contended that these issues presented
28 challenges not only to liability, but challenges to Plaintiff’s ability to show that a PAGA claim

1 could be efficiently and manageably adjudicated without abridging Defendant's due process
2 rights.

3 71. Defendant pointed to case law that held that, given the derivative nature of a PAGA
4 claim, it would stand or fall based on the claims from which it derives, and the success of showing,
5 *inter alia*, off-the-clock work, failure to properly pay wages, failure to reimburse for expenses,
6 etc. Defendant also pointed to case law demonstrating that courts have attributed little separate
7 value to PAGA claims, for example, allowing them to be resolved for \$0 where the other
8 underlying California Labor Code claims are being resolved. See, e.g. *Matter of Nordstrom*
9 *Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No abuse of discretion by the trial court
10 in approving the allocation of \$0 toward PAGA penalties, where PAGA claim is resolved as a part
11 of an overall resolution of the underlying California Labor Code violations); *Franco v. Ruiz Food*
12 *Prods, Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801, at *14
13 (Approving allocation of \$10,000, out of the settlement of \$2.5 million, toward the settlement of
14 the PAGA claim); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-CV-0324-AWI-
15 SKO, 2012 WL 5364655, at *3 (Approving the allocation of \$10,000, out of the settlement of \$3.7
16 million, toward the settlement of the PAGA claim); *Chu v. Wells Fargo Investments, LLC* (N.D.
17 Cal. Feb. 16, 2011) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL 672645, at *1 (Approving
18 the allocation of \$10,000, out of the settlement of \$6.9 million, toward the settlement of the PAGA
19 claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-cv-1683-MMA (JMA), 2011
20 WL 4899942, at *18 (Approving the allocation of \$3,000, out of the settlement of \$1.2 million,
21 toward the settlement of the PAGA claim); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11,
22 2012) 2012 WL 2117001, at *14 (approving the allocation of \$10,000, out of the settlement of
23 \$518,245, toward settlement of the PAGA claim).

24 72. Assuming that the Court would be satisfied that the PAGA claim was susceptible to
25 being efficiently tried and adjudicated on a representative basis, and assuming that civil penalties
26 in the amount of \$1,600 could be covered for each of the one hundred forty-five (145) aggrieved
27 employees who were estimated to have worked during the relevant period (i.e., from November 5,
28 2019 to January 10, 2022), the PAGA penalties at issue, which the Court could determine whether

1 or not to assess and whether or not to reduce, were estimated to be approximately \$232,000.00
2 (145 individuals x \$1,600 civil penalties).

3 73. Plaintiff's Counsel recognized the realities of Defendant's arguments, evidence and
4 information obtained through investigations as well as from Defendant, the circumstances and
5 realities of the case, the current state of the law, the costs of continued litigation, and the risks to
6 recovery, and applied appropriate discounts for them. At this juncture, a discount of 20% was
7 applied to account for the risks associated with establishing manageability and possible bifurcation
8 of discovery and/or trial (bringing the value of the claim closer to \$185,600.00), a discount of 50%
9 was applied to account for the risks associated with succeeding on the merits and establishing
10 liability (bringing the value of the claim closer to \$92,800.00), and a discount of 40% was applied
11 to account for the risks associated with proving the extent of penalties that are warranted and
12 possible discretionary reduction of penalties by the Court (bringing the value of the claim closer
13 to \$55,680.00).

14 74. The foregoing discussion confirms that the amount of the Settlement is adequate in
15 light of Plaintiff's allegations and causes of action, the evidence at issue with respect to those
16 allegations and causes of action, and legal and factual arguments and circumstances which pose
17 challenges to certification, manageability, merits, and monetary recovery. The conclusion to be
18 drawn from the foregoing analysis is that neither class certification, manageability, liability, nor
19 the ability to adjudicate and/or recover monetary relief on a class-wide or representative basis is
20 clear-cut, which is why the Parties elected to settle this matter. Plaintiff's Counsel also recognized
21 that additional discounts could be made to the risk-adjusted value to account for the costs and
22 expenses associated with further litigation and the present value of obtaining a settlement now as
23 opposed to monetary recovery, if any, that may be obtained in the future after further litigation.
24 Plaintiff's Counsel recognized the circumstances and realities of the case, applicable case law and
25 regulations, and risks to recovery and applied appropriate discounts.

26 75. Plaintiff's Counsel submits that the Settlement is fair, reasonable, and adequate, and
27 is in the best interests of Plaintiff, the Class, and the State of California. Plaintiff's Counsel further
28 submits that the Settlement is within an acceptable range of recovery for this type of litigation

1 given the strengths and weaknesses of the case, the inherent costs and risks of further litigation,
2 and the costs and risks associated with class certification, representative adjudication, trial, and/or
3 appeals.

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

6 Executed on this 10 day of April 2023, at Glendale, California.

7 

8 _____
9 Selena Matavosian
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement
3 Agreement”) is made by and between Plaintiff Juan Juarez Perez (“Plaintiff”) and Defendant Jupiter, LLC
4 (“Defendant”) (together, with Plaintiff, the “Parties”).

5 This Settlement Agreement shall be binding on Plaintiff, Participating Class Members (as defined
6 below), PAGA Group Members (as defined below), the State of California (as set forth herein), and on
7 Defendant, subject to the terms and conditions hereof and approval of the Court.

8 **I. DEFINITIONS**

9 In addition to other terms defined in this Agreement, the terms below have the following meaning
10 in this Agreement:

11 A. “Action” means the action entitled *Juan Juarez Perez v. Jupiter, LLC*, Case No.
12 RG20084193 pending in the Superior Court of the State of California, County of Alameda.

13 B. “Class” means all current and former hourly-paid and/or non-exempt employees who were
14 employed by Defendant in the State of California at any time during the Class Period.

15 C. “Class Member” means a member of the Class.

16 D. “Class Counsel” means Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Selena
17 Matavosian of Lawyers *for* Justice, PC.

18 E. “Class Counsel Fees Payment” and “Litigation Expenses Payment” mean the amounts to
19 be paid to Class Counsel for attorneys’ fees and reimbursement of litigation expenses, respectively, as
20 approved by the Court, to compensate them for their legal work in connection with the Action, including
21 their pre-filing investigation, filing of the Action, all related litigation activities, all Settlement work, all
22 post-Settlement compliance procedures, and related litigation expenses incurred in connection with the
23 Action.

24 F. “Class Data” means a complete list of all Class Members that Defendant will diligently
25 and in good faith compile from their records and provide to the Settlement Administrator. The Class
26 Data will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class
27 Member’s full name, last known mailing address, Social Security Number, start and end dates of
28 employment as a hourly-paid or non-exempt employee for Defendant in California during the Class

Period and, if applicable, during the PAGA Period, and such other information and data as necessary for the Settlement Administrator to independently calculate the Workweeks (as defined below).

G. “Class Notice” means the Notice of Class Action Settlement, substantively in the form attached hereto as **Exhibit A** to this Agreement and incorporated by reference into this Agreement.

H. “Class Period” means the period from December 17, 2016 through August 5, 2022, or the Alternate End Date, if applicable pursuant to Section IV.C.5.

I. “Class Settlement” means the settlement and release of all Released Class Claims.

J. “Court” means the Superior Court of the State of California for the County of Alameda.

K. “Defendant’s Counsel” means Amy L. Lessa and Nicole E. Stenoish of Fisher & Phillips LLP.

L. “Effective Date” means the date when all of the following events have occurred: (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant’s Counsel; (2) the Court has given and entered preliminary approval to the Settlement; (3) the Class Notice has been mailed to the Class Members, providing them with an opportunity to object to the terms of the Class Settlement or opt out of the Class Settlement; (4) the Court has held a Final Approval Hearing and entered a Final Approval Order and Judgment; and (5) the later of the following events: five (5) business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has been filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.

M. “Final Approval” means the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of judgment based thereon.

N. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Final Approval Order and Judgment.

///

O. “Gross Settlement Amount” means Three Hundred Thousand Dollars (\$300,000.00) to be paid by Defendant in two installments (as described below and subject to Section IV.D.9), in full resolution of all Released Class Claims, Released PAGA Claims, and the Action. This amount is an all-in amount without any reversion to Defendant and will be inclusive of all payments of the Individual Settlement Shares to the Participating Class Members, Individual PAGA Payments to PAGA Group Members, Settlement Administration Expenses to the Settlement Administrator, Class Counsel Fees Payment to Class Counsel, Litigation Expenses Payment to Class Counsel, Service Payment to Plaintiff, and LWDA Payment to the LWDA, as set forth in this Agreement. The employer’s share of payroll taxes on the Wages Portion of the Individual Settlement Shares (“Employer Taxes”) will be paid by Defendant separately and in addition to the Gross Settlement Amount.

P. “Individual PAGA Payment” means a PAGA Group Member’s *pro rata* share of the PAGA Group Member Amount that a PAGA Group Member is eligible to receive under the PAGA Settlement, to be calculated in accordance with Section IV.B.3.a below.

Q. “Individual Settlement Payment” means the net payment of each Participating Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the Wages Portion of the Individual Settlement Share.

R. “Individual Settlement Share” means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Settlement Agreement, to be calculated in accordance with Section IV.C.2 below.

S. “LWDA Payment” means the amount that the Parties have agreed to pay the LWDA for its seventy-five percent (75%) share of the PAGA Payment, as set forth in Section IV.B.3 below.

T. “Net Settlement Amount” means the portion of the Gross Settlement Amount that is available for distribution to Participating Class Members for the Class Settlement, which is the Gross Settlement Amount less the Court-approved amounts for the Service Payment, Class Counsel Fees Payment, Litigation Expenses Payment, PAGA Payment, and Settlement Administration Expenses.

U. “Non-Participating Class Member” means a Class Member who submits a valid and timely Request for Exclusion from the Class Settlement.

///

1 V. “PAGA Group” or “PAGA Group Member(s)” means all current and former hourly-paid
2 and/or non-exempt employees who were employed by Defendant in the State of California at any time
3 during the PAGA Period.

4 W. “PAGA Payment” means Sixty Thousand Dollars (\$60,000.00) of the Gross Settlement
5 Amount allocated as civil penalties under the Private Attorneys General Act, California Labor Code §
6 2698, *et seq.* (“PAGA”). Seventy-five percent (75%) of the PAGA Payment, or Forty-Five Thousand
7 Dollars (\$45,000.00), will be payable to the Labor and Workforce Development Agency (“LWDA”)
8 (“LWDA Payment”), and the remaining twenty-five percent (25%), or Fifteen Thousand Dollars
9 (\$15,000.00), will be distributed on a *pro rata* basis to PAGA Group Members based on their Workweeks
10 during the PAGA Period (“PAGA Group Member Amount”).

11 X. “PAGA Period” means the period from November 5, 2019 through August 5, 2022, or the
12 Alternate End Date, if applicable pursuant to Section IV.C.5.

13 Y. “PAGA Settlement” means the settlement and release of Released PAGA Claims.

14 Z. “Participating Class Member” means a Class Member who does not submit a valid and
15 timely Request for Exclusion from the Class Settlement.

16 AA. “Preliminary Approval” means entry of the Court order granting preliminary approval of
17 the Settlement Agreement.

18 BB. “Released Class Claims” means any and all claims, rights, demands, liabilities, and causes
19 of action of any nature or description, under state, federal, or local law, that were litigated in the Operative
20 Complaint against Defendant or could have been litigated based on the facts and circumstances alleged in
21 the Operative Complaint against Defendant, arising during the period from December 17, 2016 through
22 Preliminary Approval, including but not limited to, all claims under the California Labor Code, Industrial
23 Welfare Commission Wage Orders, related orders of the California Industrial Commission, Business and
24 Professions Code section 17200, *et seq.*, regulations, and/or other provisions of law for failure to pay
25 overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide
26 compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay
27 wages upon termination, failure to timely pay wages during employment, failure to provide compliant
28 wage statements, failure to keep requisite payroll records, failure to reimburse necessary business

1 expenses, and violation of California’s unfair competition law (California Business and Professions Code
2 section 17200, *et seq.*) based on the aforementioned, for violations of California Labor Code sections 201,
3 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802,
4 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order Nos. 1-2001, 4-2001,
5 5-2001, 7-2001, and 8-2001.

6 CC. “Released PAGA Claims” means any and all claims for civil penalties under the Private
7 Attorneys General Act, California Labor Code Section 2698, *et seq.*, arising out of the facts alleged in
8 Plaintiff’s LWDA Letter, arising during the period from November 5, 2019 through Preliminary
9 Approval, for failure to pay overtime wages, failure to provide compliant meal period and associated
10 premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum
11 wages, failure to timely pay wages upon termination, failure to timely pay wages during employment,
12 failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse
13 necessary business expenses, in violation of California Labor Code sections 201, 202, 203, 204, 226(a),
14 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare
15 Commission Wage Orders, including *inter alia*, Wage Order Nos. 1-2001, 4-2001, 5-2001, 7-2001, and
16 8-2001.

17 DD. “Released Parties” means Defendant Jupiter, LLC, and its former, present, and future
18 owners, parents, predecessors, successors, affiliates, subsidiaries, divisions, investors, and all of their
19 current, former, or future officers, directors, members, managers, agents, consultants, employees,
20 attorneys, accountants, representatives, partners, shareholders, joint ventures, insurers, successors, and
21 assigns.

22 EE. “Request for Exclusion” means the written request by a Class Member to exclude himself
23 or herself from the Class Settlement submitted in accordance with Section IV.D.3.a below.

24 FF. “Service Payment” means the amount to be paid to Plaintiff in recognition of his efforts in
25 prosecuting the Action, as set forth in Section IV.B.1 below.

26 GG. “Settlement Administrator” means Phoenix Settlement Administrators, the third-party
27 administrator proposed by the Parties and approved by the Court for purposes of administering the
28 Settlement. The Parties and their counsel each represent that they do not have any financial interest in

the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

HH. “Settlement Administration Expenses” means the expenses payable from the Gross Settlement Amount, subject to Court approval, to the Settlement Administrator for administration of the Settlement, as set forth in Section IV.B.4 below.

II. “Workweek(s)” means the number of weeks each Class Member was employed by Defendant as a hourly-paid and/or non-exempt employee in California during the Class Period and the number of weeks each PAGA Group Member was employed by Defendant as a hourly-paid and/or non-exempt employee in California during the PAGA Period, which will be calculated by the Settlement Administrator by dividing the total number of calendar days in which each Class Member worked for Defendant during the applicable Class Period and/or PAGA Period (less any days on a leave of absence) by seven (7).

II. RECITALS

A. On November 5, 2020, Plaintiff sent a letter to the LWDA and Defendant, regarding his intent to pursue civil penalties for claimed violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and IWC Wage Orders, including *inter alia*, Wage Order Nos. 1-2001, 4-2001, 5-2001, 7-2001, and 8-2001 (“LWDA Letter”).

B. On December 17, 2020, Plaintiff filed a Class Action Complaint for Damages against Defendant in the Superior Court of the State of California for the County of Alameda, Case No. RG20084193, alleging causes of action for violation of (1) California Labor Code §§ 510 and 1198 (Failure to Pay Overtime), (2) California Labor Code §§ 226.7 and 512(a) (Failure to Provide Compliant Meal Periods and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods and Associated Premiums), (4) California Labor Code §§ 1194, 1197 and 1197.1 (Failure to Pay Minimum Wages), (5) California Labor Code §§ 201 and 202 (Failure to Timely Pay Final Wages), (6) California Labor Code § 204 (Failure to Timely Pay Wages During Employment), (7) California Labor Code § 226(a) (Failure to Provide Compliant Wage Statements), (8) California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records), (9) California Labor Code §§ 2800 and 2802 (Failure to

Reimburse Business Expenses), and (10) California Business & Professions Code § 17200, *et seq.*

C. On January 12, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. that added a California Private Attorney General Act cause of action (the “Operative Complaint” or “First Amended Complaint”).

D. On or around April 7, 2021, Defendant filed an Answer to the First Amended Complaint.

E. Defendant denies all material allegations set forth in the Action and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Action and Released Class Claims and Released PAGA Claims.

F. Class Counsel in the Action diligently investigated the allegations asserted in the Action and evaluated the claims against Defendant, including any and all applicable defenses and the applicable law. The investigation included, *inter alia*, the exchange of information, data, and documents, and review of numerous corporate policies and practices.

G. On February 8, 2022, the Parties participated in an all-day mediation presided over by Jeffrey Krivis, Esq. (the “Mediator”), a respected mediator of wage and hour class actions. At the mediation, the Parties were unable to reach a settlement. The Parties continued settlement negotiations and with the assistance of the Mediator’s evaluations, the Parties ultimately reached the settlement that is memorialized herein, after accepting the Mediator’s proposal. The settlement discussions were conducted at arm’s-length, and the settlement is the result of an informed and detailed analysis of Defendant’s potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel’s own independent investigation and evaluation, Class Counsel believes that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members, the State of California, and PAGA Group Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant.

///

1 H. The Parties expressly acknowledge that this Settlement Agreement is entered into solely
2 for the purpose of compromising significantly disputed claims and that nothing herein is an admission of
3 liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved and
4 does not become effective, it will be of no force or effect, and the Parties shall be returned to their original
5 respective positions.

6 Based on the aforementioned recitals that are a part of this Agreement, the Parties agree as follows:

7 **III. CLASS CERTIFICATION**

8 A. For purposes of this settlement only, the Parties stipulate to the certification of the Class.

9 B. The Parties agree that certification for the purpose of settlement is not an admission that
10 certification is proper under Section 382 of the California Code of Civil Procedure. Should, for
11 whatever reason, the Court not grant Final Approval, or if the Final Approval Order and Judgment
12 thereon does not become final, the Parties' stipulation to class certification as part of the Settlement
13 shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in
14 connection with, the issue of whether or not certification would be appropriate or inappropriate in a non-
15 settlement context in this or any other proceeding.

16 **IV. SETTLEMENT TERMS AND CONDITIONS**

17 A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement,
18 including Section IV.C.5, the Gross Settlement Amount that Defendant will pay under this Settlement is
19 Three Hundred Thousand Dollars (\$300,000.00) to be paid in two installments. This amount is all-
20 inclusive of all payments contemplated in this resolution, excluding any Employer Taxes, which will be
21 separately paid by Defendant to the Settlement Administrator. The entire Gross Settlement Amount will
22 be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross
23 Settlement Amount will revert to Defendant.

24 B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of
25 this Agreement, the Settlement Administrator will make the following distributions out of the Gross
26 Settlement Amount:

27 ///

28 ///

1 1. **To Plaintiff:** In recognition of his efforts and work in prosecuting the Action, and
2 in exchange for Plaintiff's execution of a general release of all claims against Defendant in Plaintiff's
3 individual capacity and California Civil Code Section 1542, as outlined in Section IV.E.3, Plaintiff will
4 apply to the Court for an award of not more than Seven Thousand Five Hundred Dollars (\$7,500.00) as
5 a Service Payment. Defendant will not oppose a Service Payment of up to \$7,500.00 for Plaintiff. The
6 Settlement Administrator will distribute the Court-approved Service Payment out of the Gross Settlement
7 Amount, in addition to Plaintiff's Individual Settlement Payment and Individual PAGA Payment, subject
8 to Court approval. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff for the Service
9 Payment, and Plaintiff shall be solely and legally responsible for correctly characterizing this
10 compensation for tax purposes and for paying any taxes on the amounts received. If the Court approves
11 a Service Payment of less than \$7,500.00 for Plaintiff, the difference between the lesser amount
12 approved by the Court and the amount allocated toward the Service Payment will be part of the Net
13 Settlement Amount for the benefit of Participating Class Members.

14 2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more
15 than thirty-five percent (35%) of the Gross Settlement Amount, which is presently One Hundred Five
16 Thousand Dollars (\$105,000.00) for attorneys' fees (i.e., Class Counsel Fees Payment) and an amount
17 not more than Thirty Thousand Dollars (\$30,000.00) for reimbursement of actual litigation costs and
18 expenses incurred (i.e., Litigation Expenses Payment). Defendant will not oppose a request for the Class
19 Counsel Fees Payment and Litigation Expenses Payment consistent with this Agreement and approved
20 by the Court. The Settlement Administrator will distribute the Class Counsel Fees Payment and
21 Litigation Expenses Payment out of the Gross Settlement Amount, subject to Court approval. These
22 amounts will cover any and all work performed and any and all costs incurred by Class Counsel in
23 connection with the litigation of the Action, including without limitation all work performed and costs
24 incurred to date, and all work to be performed and all costs to be incurred in connection with obtaining
25 the Court's approval of this Settlement Agreement, including any objections raised and any appeals
26 necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly
27 characterizing this compensation for tax purposes and for paying any taxes on the amounts received.
28 With respect to the Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel, the

Settlement Administrator may purchase an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the purchase and/or use of attorney fee deferral vehicles for Class Counsel, by the Settlement Administrator, will be paid separately by Class Counsel and will not be included within the Settlement Administration Expenses. If the Court approves a Class Counsel Fees Payment or a Litigation Expenses Payment of less than these amounts, the difference between the lesser amount approved by the Court and the amount allocated toward the Class Counsel Fees Payment and Litigation Expenses Payment will be part of the Net Settlement Amount for the benefit of Participating Class Members. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel.

3. **To the Labor Workforce and Development Agency and PAGA Group Members.** The Parties will seek approval from the Court for the PAGA Payment of Sixty Thousand Dollars (\$60,000.00) out of the Gross Settlement Amount, of which seventy-five percent (75%), or \$45,000.00, will be distributed to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%), or \$15,000.00, will be distributed to the PAGA Group Members on a *pro rata* basis (i.e., PAGA Group Member Amount). If the Court approves a PAGA Payment of less than \$60,000.00, the remainder will be part of the Net Settlement Amount for the benefit of Participating Class Members.

a. **Individual PAGA Payment Calculation.** Individual PAGA Payments will be calculated and apportioned from the PAGA Payment based upon the number of Workweeks each PAGA Group Member worked during the PAGA Period, as follows: the Settlement Administrator will divide the PAGA Group Member Amount by the Workweeks of all PAGA Group Members during the PAGA Period to yield the "PAGA Workweek Value," and multiply each PAGA Group Member's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment that he or she is eligible to receive under the PAGA Settlement. The Settlement Administrator will report the Individual PAGA Payments on IRS 1099 Forms, if applicable. PAGA Group Members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

///

1 **4. To the Settlement Administrator.** The Settlement Administrator will distribute out of
2 the Gross Settlement Amount, to itself, its reasonable fees and expenses, as approved by the Court, in an
3 amount not to exceed Eleven Thousand Dollars (\$11,000.00) (i.e., Settlement Administration Expenses).
4 These costs, which will be paid from the Gross Settlement Amount, subject to Court approval, will
5 include, *inter alia*, translating the Class Notice into Spanish, printing, distributing, and tracking Class
6 Notices and other documents for this Settlement, calculating and distributing payments due under the
7 Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings,
8 and remittances, providing necessary reports and declarations, and other duties and responsibilities set
9 forth herein to process this Settlement, and as requested by the Parties. The Settlement Administrator
10 shall transmit the required Employer Taxes and employees' share of the withholdings to the appropriate
11 state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that
12 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section
13 468B-1. To the extent actual Settlement Administration Expenses are greater than the estimated amount
14 stated herein, such excess amount will be deducted from the Gross Settlement Amount, subject to
15 approval by the Court. To the extent the Settlement Administration Expenses approved by the Court are
16 less than \$11,000.00, the remainder will be part of the Net Settlement Amount for the benefit of
17 Participating Class Members. The Parties each represent they do not have a financial interest in the
18 Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
19 creates or could create a conflict of interest.

20 **C. Payments from the Net Settlement Amount.** The Net Settlement Amount will be the
21 remainder of the Gross Settlement Amount after deducting the Service Payment, Class Counsel Fees
22 Payment, Litigation Expenses Payment, PAGA Payment, and Settlement Administration Expenses. The
23 Net Settlement Amount will be distributed to Participating Class Members as follows:

24 **1. Individual Settlement Share.** Subject to the terms and conditions of this
25 Agreement, the Settlement Administrator will distribute an Individual Settlement Share from the Net
26 Settlement Amount to each Participating Class Member. The submission of a claim form is not required
27 in order for a Participating Class Member to be paid their Individual Settlement Share.

28 ///

1 2. **Individual Settlement Share Calculation.**

2 a. After Preliminary Approval of the Settlement, the Settlement Administrator
3 will determine the Workweeks each Class Member worked during the Class Period, divide the Net
4 Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the
5 “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks during the
6 Class Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share
7 that he or she may be eligible to receive under the Class Settlement.

8 b. After Final Approval of the Settlement, the Settlement Administrator will
9 divide the final Net Settlement Amount by the Workweeks of all Participating Class Members during the
10 Class Period to yield the “Final Workweek Value,” and multiply each Participating Class Member’s
11 individual Workweeks during the Class Period by the Final Workweek Value to yield his or her
12 Individual Settlement Share.

13 3. **Withholding.**

14 a. Each Individual Settlement Share will be allocated as follows: twenty
15 percent (20%) wages (the “Wage Portion”) and eighty percent (80%) interest, penalties, and non-wage
16 damages (“Non-Wage Portion”). The Wage Portion will be reported on an IRS Form W-2 and the Non-
17 Wage Portion will be reported on IRS Form 1099 (if applicable) by the Settlement Administrator. The
18 Settlement Administrator will withhold the employee’s share of taxes and withholdings with respect to
19 the Wages Portion of the Individual Settlement Shares, and issue checks to Participating Class Members
20 for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these
21 taxes and withholdings). The Settlement Administrator will not undertake any withholding with
22 respect to the Non-Wage Portion of Individual Settlement Shares. Any payment for an Individual
23 PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an
24 IRS Form-1099, if necessary; the Settlement Administrator will not undertake any withholding with
25 respect to the Individual PAGA Payment. Employer Taxes will be paid separately and in addition to
26 the Gross Settlement Amount. Participating Class Members and PAGA Group Members assume full
27 responsibility and liability for any taxes owed on any portion of their Individual Settlement Payment
28 and/or Individual PAGA Payment.

1 4. **Effect of Non-Participating Class Members.** Non-Participating Class Members
2 will not be issued an Individual Settlement Share, and their Request for Exclusion will not reduce the
3 Gross Settlement Amount or the Net Settlement Amount. Any Non-Participating Class Member's
4 respective estimated Individual Settlement Share will remain a part of the Net Settlement Amount for
5 distribution to Participating Class Members on a *pro rata* basis.

6 5. **Escalator Clause.** Defendant has represented that for the period December 17,
7 2016 to January 10, 2022, there were 385 Class Members and approximately 19,797 Workweeks. If it is
8 determined that the total number of Workweeks actually exceeds 19,797 by more than ten percent (10%)
9 by August 5, 2022, Defendant will have the option to: (a) increase the Gross Settlement Amount on a *pro*
10 *rata* basis by the number of Workweeks in excess of 10% (e.g., if the Workweeks exceed 19,797 by 11%,
11 the Gross Settlement Amount will increase by 1%) or (b) shorten the Class Period (and also the PAGA
12 Period) to the last date on which the Workweeks do not exceed 21,777 ("Alternate End Date"). Defendant
13 will provide sufficient information to the Settlement Administrator to assess whether this 10% threshold
14 is triggered.

15 D. **Procedure for Approving Settlement.**

16 1. **Motion for Preliminary Approval of Settlement by the Court.**

17 a. After execution of this Settlement Agreement, Plaintiff will file a motion
18 for preliminary approval of the Settlement with the Court for an order granting preliminary approval of
19 the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the
20 "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class Notice,
21 the proposed orders, or other documents necessary to implement the Settlement will be referred to the
22 Mediator for resolution.

23 b. At the hearing on the Motion for Preliminary Approval, the Parties will
24 jointly appear, support the granting of the motion, and submit a proposed order granting Preliminary
25 Approval of the Settlement.

26 c. In support of Plaintiff's motion for preliminary approval of the Settlement,
27 Defendant shall provide a declaration regarding their financial position, the nature of Defendant's
28 business operations, the makeup of Defendant's workforce, the extent of pre-mediation discovery

provided by Defendant, and its need to fund the Gross Settlement Amount in two installment payments.

d. Should the Court decline to preliminarily approve material aspects of the Settlement (including, but not limited to, the scope of releases of claims or the binding effect of the Settlement on Participating Class Members or PAGA Group Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

2. **Notice to Class Members.** After the Court enters an order granting Preliminary Approval of the Settlement ("Order Granting Preliminary Approval"), every Class Member will be sent the Class Notice as follows:

a. No later than fourteen (14) calendar days after the Court enters an Order Granting Preliminary Approval, Defendant will provide to the Settlement Administrator an electronic database containing the Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and will not be used for any other purpose by Class Counsel.

b. Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Settlement Administrator will search the U.S. Postal Service's National Change of Address database to attempt to locate updated mailing addresses for Class Members (and use the updated mailing addresses that are located, in lieu of the mailing address information provided by Defendant in the Class Data) and mail the Class Notice in English and Spanish to all Class Members via first-class U.S. Mail.

c. If a Class Notice is returned as undeliverable, and without a forwarding address, on or before the Response Deadline, the Settlement Administrator will promptly, within five (5) calendar days of receipt, search for a more current address for the Class Member by way of skip trace and re-mail the Class Notice to an alternate address located through skip trace. The Settlement

1 Administrator will use the Class Data and otherwise work with Defendant to find a more current address.
2 If a Class Notice is returned as undeliverable, and with a forwarding address, on or before the Response
3 Deadline, the Settlement Administrator will promptly, within five (5) calendar days of receipt, re-mail
4 the Class Notice to the forwarding address. If the Class Notice is re-mailed, the Settlement Administrator
5 will note for its own records the date and address of each such re-mailing and notify Class Counsel and
6 Defendant's Counsel of the re-mailing, as part of a weekly status report provided to the Parties.

7 d. The Settlement Administrator must, on a weekly basis, provide written
8 reports to Class Counsel and Defense Counsel that, among other things, tally the number of Class Notices
9 mailed or re-mailed, Class Notices returned undelivered, the number of Requests for Exclusion from the
10 Class Settlement, objections to the Class Settlement, and Workweeks Disputes it receives ("Weekly
11 Report").

12 e. Not later than sixteen (16) court days before the date by which Plaintiff files
13 the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for
14 filing with the Court a declaration of due diligence setting forth its compliance with its obligations under
15 this Agreement and detailing the number of Requests for Exclusion it received (including the numbers
16 of valid and deficient submissions), the names of all Non-Participating Class Members, the number of
17 Workweeks Disputes received (including the numbers of valid and deficient submissions) and the
18 outcome of these disputes, the number of objections received (including the numbers of complete and
19 deficient submissions), and attaching the objections received. Prior to the Final Approval Hearing, the
20 Settlement Administrator will supplement its declaration of due diligence if any material changes occur
21 from the date of the filing of its prior declaration.

22 3. **Objections, Workweeks Disputes, and Requests for Exclusion.** Class Members
23 may submit a Request for Exclusion from the Class Settlement, Participating Class Members may submit
24 objections to the Class Settlement (including objections to Class Counsel Fees Payment, Litigation
25 Expenses Payment, and Service Payment), and Class Members and PAGA Group Members may also
26 submit disputes as to Workweeks allocated to them, pursuant to the following procedures:

27 ///

28 ///

1 a. **Requests for Exclusion from the Class Settlement.** The Parties agree,
2 and the Class Notice will provide, that Class Members who wish to exclude themselves from the Class
3 Settlement must send a signed Request for Exclusion to the Settlement Administrator by mail,
4 postmarked no later than forty-five (45) calendar days after the Settlement Administrator mails the Class
5 Notice (“Response Deadline”). A Request for Exclusion must: (1) contain the case name and number of
6 the Action; (2) state the Class Member’s full name, address, telephone number, and last four digits of his
7 or her Social Security number; (3) be signed; and (4) clearly state that the Class Member requests to be
8 excluded from the Class Settlement. If a question is raised about the authenticity of a signed Request for
9 Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class
10 Member’s identity. A Non-Participating Class Member will not participate in or be bound by the Class
11 Settlement or to portions of the Final Approval Order and Judgment that apply to the Class Settlement
12 (however, if a Non-Participating Class Member is a PAGA Group Member, he or she will nevertheless
13 be bound to the PAGA Settlement and the portions of the Final Approval Order and Judgment that apply
14 to the PAGA Settlement). A Class Member who does not complete and mail a valid and timely Request
15 for Exclusion in the manner and by the deadline specified above will automatically be deemed a
16 Participating Class Member and be bound by all terms and conditions of the Class Settlement, including
17 the release of Released Class Claims, if the Settlement is approved by the Court, and by the Final
18 Approval Order and Judgment (as it pertains to the Class Settlement), regardless of whether he or she has
19 objected to the Class Settlement. Non-Participating Class Members shall not be permitted to file
20 objections to the Class Settlement or appear at the Final Approval Hearing to voice any objections to the
21 Class Settlement.

22 All Participating Class Members who do not submit a valid and timely Request for Exclusion
23 will be issued an Individual Settlement Share, without the need to file a claim form, and will be bound
24 by all of the terms of the Class Settlement, including without limitation, the release of the Released Class
25 Claims as set forth in this Agreement. Any Class Member who submits a valid and timely Request for
26 Exclusion is nevertheless bound to the PAGA Settlement if he or she is a PAGA Group Member, as
27 well as any judgment that may be entered by the Court if it grants Final Approval to the Settlement, as
28 it pertains to the PAGA Settlement.

b. **Objections to the Class Settlement.** The Parties agree, and the Class Notice will provide, that only Participating Class Members may object to the Class Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator (who will provide copies to the Parties' counsel and attach copies to its declaration that is filed with the Court in advance of the Final Approval Hearing) by mail, postmarked no later than the Response Deadline. A written objection must: (1) contain the case name and number of the Action; (2) state the Participating Class Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; (4) clearly set forth the grounds for the objection; (5) attach any documentation that the objection is based upon; and (6) identify any counsel representing the Participating Class Member with respect to the objection. In addition to submitting a written objection, or alternatively, Participating Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Class Settlement or any aspect thereof. A Participating Class Member who does not submit an objection in the manner and by the deadline specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Class Settlement or any aspect thereof. Non-Participating Class Members shall have no ability to comment on or object to the Class Settlement.

c. **Workweeks Disputes.** The Parties agree, and the Class Notice will provide, that each Class Member may dispute the number of Workweeks allocated to him or her during the Class Period and/or PAGA Period. Any dispute as to this allocation will be resolved by the Settlement Administrator. Any such dispute must be in writing and sent to the Settlement Administrator, by mail, postmarked no later than the Response Deadline. A written dispute ("Workweeks Dispute") must: (1) contain the case name and number of the Action; (2) state the Class Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed; (4) clearly state that the Class Member disputes the number of Workweeks credited to him or her and state the number of Workweeks he or she believes are correct; and (5) attach any documentation to support the dispute.

///

///

1 d. **Re-mailed Notice.** In the event that a Class Notice is re-mailed to a Class
2 Member, the Response Deadline for that Class Member shall be the extended by fifteen (15) calendar
3 days from the original deadline.

4 4. **Right of Defendant to Reject Settlement.** If ten percent (10%) or more of the
5 Class Members submit valid and timely Requests for Exclusion, Defendant will have the right, but not
6 the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement,
7 including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that
8 otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement
9 Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement.
10 Defendant will notify Class Counsel in writing and the Court whether it is exercising this right to void
11 no later than seven (7) calendar days after the Settlement Administrator notifies the Parties that the
12 number of valid and timely Requests for Exclusion it has received exceeds 10% or more of the Class
13 Members.

14 5. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor
15 their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class
16 Member to object to the Class Settlement, appeal from the Final Approval Order and Judgment, or submit
17 Requests for Exclusion from the Class Settlement.

18 6. **Additional Briefing and Final Approval.**

19 a. Plaintiff will file with the Court his application for the Class Counsel Fees
20 Payment, Litigation Expenses Payment, and Service Payment no later than the date on which Plaintiff
21 files the motion for final approval not later than sixteen (16) court days before the Final Approval
22 Hearing, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.
23 Plaintiff may combine the motion seeking final approval of the settlement with the application for the
24 Class Counsel Fees Payment, Litigation Expenses Payment, and Service Payment. If any opposition is
25 filed, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a
26 reply in support of the motion for Final Approval and/or application for Service Payment, Class Counsel
27 Fees Payment, and Litigation Expenses Payment.

28 ///

1 b. If the Court does not grant final approval of the Settlement or grants final
2 approval conditioned on any material modification or change to the Settlement (including, but not limited
3 to, the scope of the release of claims with respect to Participating Class Members and/or PAGA Group
4 Members), then the Parties shall work together in good faith to address any concerns raised by the Court
5 and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser
6 amount than that sought by Plaintiff and Class Counsel for Service Payment, Class Counsel Fees
7 Payment, or Litigation Expenses Payment, will not constitute a material modification to the Settlement
8 within the meaning of this Paragraph.

9 c. Upon final approval of the Settlement by the Court at or after the Final
10 Approval Hearing, the Parties will present for the Court's approval and entry a proposed order granting
11 final approval of the Settlement and judgment based thereon ("Final Approval Order and Judgment").
12 After entry of the Final Approval Order and Judgment, the Court will have continuing jurisdiction over
13 the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing
14 settlement administration matters, and (iii) addressing such post-judgment matters as may be appropriate
15 under court rules or applicable law. The entry of the judgment will be pursuant to California Rule of
16 Court 3.769(h) in a form acceptable to the Parties.

17 7. **Waiver of Right to Appeal.** Provided that the Final Approval Order and Judgment
18 is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members
19 who did not timely submit an objection to the Class Settlement, Defendant, and their respective counsel
20 hereby waive any and all rights to appeal from the Final Approval Order and Judgment, including all
21 rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to
22 vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not
23 include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment
24 proceedings. If an appeal is taken from the Final Approval Order and Judgment, the time for
25 consummation of the Settlement (including making payments under the Settlement) will be suspended
26 until such time as the appeal is finally resolved and the Final Approval Order and Judgment becomes
27 final.

28 ///

1 8. **Vacating, Reversal, or Material Modification of Final Approval Order and**
2 **Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for
3 *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies
4 the Final Approval Order and Judgment such that there is a material modification to the Settlement
5 (including, but not limited to, the scope of the release of claims with respect to Participating Class
6 Members and/or PAGA Group Members), and that Court's decision is not completely reversed and the
7 Final Approval Order and Judgment is not fully affirmed on review by a higher Court, then the Parties
8 shall work together in good faith to address any concerns raised by the reviewing Court and propose a
9 revised Settlement for the approval of the Court. A vacation, reversal, or modification of the Court's
10 award of the Service Payment or the Class Counsel Fees Payment or Litigation Expenses Payment will
11 not constitute a vacation, reversal, or material modification of the Final Approval Order and Judgment
12 within the meaning of this Paragraph, provided that Defendant's obligation to make payments under this
13 Settlement will remain limited to the Gross Settlement Amount.

14 9. **Procedure for Funding of Settlement.**

15 a. Defendant shall fund the Gross Settlement Amount and the amounts
16 necessary to pay its Employer Taxes via two (2) installment payments, each of which shall be in the
17 amount of one-half of the total Gross Settlement Amount (i.e., each payment shall be \$150,000.00) plus
18 Employer Taxes which must be paid at the time of the first installment.

19 b. Within thirty (30) calendar days of the Effective Date, Defendant shall
20 provide the Settlement Administrator with the first installment payment of one-half of the Gross
21 Settlement Amount (i.e., \$150,000.00) ("First Installment"). No later than twelve (12) months after the
22 Effective Date, Defendant shall provide the Settlement Administrator with the second installment
23 payment of the remaining one-half of the Gross Settlement Amount (i.e., \$150,000.00) ("Second
24 Installment").

25 c. The Settlement Administrator shall notify Class Counsel within five (5)
26 business days in the event that Defendant fails to make either of the installment payments by the required
27 date. If Defendant does not make the required installment payment within thirty (30) calendar days of
28 the original due date of the installment, the remaining balance of the Gross Settlement Amount shall

become due and payable immediately.

10. **Procedure for Payment of Settlement Payments.**

a. The Settlement Administrator shall distribute the following payments:

(i) Within seven (7) calendar days of the funding of the First Installment and Employer Taxes: Individual Settlement Payments to Participating Class Members, Service Payment to Plaintiff, Individual PAGA Payments to PAGA Group Members, and to the extent funds remain, LWDA Payment to the LWDA.

(ii) Within seven (7) calendar days of the funding of the Second Installment: any remaining portion of the LWDA payment to the LWDA to the extent the payment was not fully made from the First Installment, Settlement Administration Expenses to the Settlement Administrator, and Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel.

11. **Uncashed Individual Settlement Payment and Individual PAGA Payment**

Checks. The Settlement Administrator may, at its discretion, distribute the Individual Settlement Payments and Individual PAGA Payments by way of a single check that combines both payments (if applicable). Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. All funds associated with canceled checks will be transmitted to the *cy pres*, Children's Advocacy Institute, in accordance with California Code of Civil Procedure section 384. The Parties and their counsel each represent they do not have a financial interest in Children's Advocacy Institute or otherwise have a relationship with Children's Advocacy Institute that creates or could create a conflict of interest. The Settlement Administrator shall undertake amended and/or supplemental tax filings and reporting, required under applicable local, state, and federal tax laws, that are necessitated due to the cancelation of any Individual Settlement Payment checks or Individual PAGA Payment checks. All Participating Class Members and PAGA Group Members shall be bound by the terms and conditions of this Settlement Agreement regardless of whether they cash or otherwise negotiate their Individual Settlement Payment check and/or Individual PAGA Payment check or not.

///

///

1 12. **Final Report by Settlement Administrator to Court.** Within ten (10) calendar
2 days after final disbursement of all funds from the Gross Settlement Amount, the Settlement
3 Administrator will serve on the Parties and file with the Court a declaration proving a final report on the
4 disbursements of all funds from the Gross Settlement Amount.

5 E. **Release of Claims.**

6 1. **Release of Released Class Claims.** Upon the Effective Date, Plaintiff and each
7 Participating Class Member will be deemed to have fully, finally, and forever released, settled,
8 compromised, relinquished, and discharged the Released Parties from any and all Released Class
9 Claims. This release and waiver, however, shall be conditional on Defendant's full payment of the Gross
10 Settlement Amount necessary to fund all payment obligations.

11 2. **Release of Released PAGA Claims.** Upon the Effective Date, Plaintiff, the State
12 of California, and all PAGA Group Members will be deemed to have fully, finally, and forever released,
13 settled, compromised, relinquished, and discharged the Released Parties from any and all Released
14 PAGA Claims. This release and waiver, however, shall be conditional on Defendant's full payment of
15 the Gross Settlement Amount necessary to fund all payment obligations. PAGA Group Members cannot
16 exclude themselves from the PAGA Settlement.

17 3. **Plaintiff's Release of Claims.** In addition, upon the Effective Date and full
18 funding of the Gross Settlement Amount, Plaintiff will be deemed to have fully released and discharged
19 the Released Parties from any and all claims arising from his employment with Defendant, separation of
20 employment from Defendant, and any acts that have or could have been asserted in any legal action or
21 proceeding against Defendant, whether known or unknown, arising under any federal, state, or local law,
22 or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act,
23 Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income
24 Security Act, National Labor Relations Act, California Corporations Code, California Business and
25 Professions Code, Orders of the California Industrial Welfare Commission, California Fair Employment
26 and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for
27 discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment
28 compensation, emotional distress, medical expenses, other economic and non-economic damages,

1 attorney fees, and costs, arising on or before the date on which the Settlement is executed. With respect
2 to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and
3 all rights and benefits available under California Civil Code Section 1542, which provides:

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

10 Plaintiff understands and agrees that claims and facts in addition to or different from those which are
11 whether known or believed by him to exist may hereafter be discovered. It is Plaintiff's intention to settle
12 fully and release all claims he now has against the Released Parties, whether known or unknown, suspected
13 or unsuspected. The Service Payment will be paid to Plaintiff specifically in exchange for the general
14 release of the Released Parties from all claims, including those specified in this Paragraph and a covenant
15 not to sue the Released Parties. Notwithstanding the above, the general release by Plaintiff shall not
16 extend to claims for enforcement of this Settlement, for workers' compensation benefits, claims for
17 unemployment benefits, or other claims that may not be released by law.

18 **F. No Effect on Other Benefits.** Any payments made under this Settlement will not result
19 in any additional benefit payments (such as 401(k) or bonus) to Plaintiff, Participating Class Members,
20 and PAGA Group Members.

21 **G. Limitation on Public Statements About Settlement.** Plaintiff and Class Counsel
22 represent that they have not and will not issue any press, publications, or other media releases about the
23 Settlement (including, but not necessarily limited to advertising or marketing materials or on social
24 media) or have any communication with the press or media regarding the Settlement. This provision will
25 not prohibit Class Counsel from (i) communicating with Class Members after Preliminary Approval is
26 granted for the sole purpose of administering the Settlement; (ii) complying with ethical obligations; (iii)
27 submitting orders and/or information to the LWDA to comply with the PAGA statute; or (iv) referring
28 to the Action and Settlement in other litigations to support their adequacy as attorneys for a putative class

1 or to justify an award of attorneys' fees. Plaintiff and Class Counsel agree not to respond to any media
2 inquiries except to refer reporters to the papers filed with the Court. Defendant may disclose information
3 regarding the Settlement under its contractual and legal obligations.

4 **H. Miscellaneous Terms.**

5 **1. No Admission of Liability or Class Certification for Other Purposes.**

6 a. Defendant and the Released Parties deny that they have engaged in any
7 unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under
8 the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action.
9 This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing
10 in this Agreement is intended or will be construed as an admission of liability or wrongdoing by
11 Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-
12 meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that
13 Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be
14 admissible in connection with, any litigation (other than solely in connection with effectuating the
15 Settlement pursuant to this Agreement).

16 b. Whether or not the Final Approval Order and Judgment becomes final,
17 neither the Settlement, this Agreement, any document, statement, proceeding, or conduct related to the
18 Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as,
19 offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
20 Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a
21 presumption, concession, indication, or admission by any of the Released Parties of any liability, fault,
22 wrongdoing, omission, concession, or damage; or (ii) disclosed, referred to, or offered in evidence against
23 any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal, or
24 administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this
25 Agreement.

26 c. This section and all other provisions of this Agreement notwithstanding,
27 any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all
28 proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any

1 claims released or barred by this Agreement.

2 2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties
3 and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties
4 relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants,
5 or inducements have been made to any Party concerning this Agreement or its exhibits other than the
6 representations, warranties, covenants, and inducements expressly stated in this Agreement and its
7 exhibits.

8 3. **Attorney Authorization.** The Parties and their counsel will cooperate with each
9 other and use their best efforts to affect the implementation of the Settlement. In the event the Parties
10 are unable to reach agreement on the form or content of any document needed to implement the
11 Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this
12 Agreement, the Parties will seek the assistance of the Mediator for resolution.

13 4. **No Prior Assignments:** The Parties represent, covenant, and warrant that they have
14 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
15 to any person or entity and portion of any liability, claim, demand, action, cause of action, or right
16 released and discharged in this Settlement.

17 5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend for
18 anything contained in this Settlement to constitute advice regarding taxes or taxability, nor will anything
19 in this Settlement be relied upon as such within the meaning of United States Treasury Department
20 Circular 230 (31 CFR Part 10, as amended) or otherwise.

21 6. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
22 amended, modified, changed, or waived only by an express written instrument signed by counsel for the
23 Parties, subject to Court approval. Counsel for all Parties may amend or modify this Agreement as needed
24 without signatures from their respective clients. The Parties agree that this Agreement may be signed
25 electronically.

26 7. **Agreement Binding on Successors.** This Agreement will be binding upon, and
27 inure to the benefit of, the successors or assigns of each of the Parties.

28 ///

1 8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will
2 be governed by and interpreted according to the laws of the State of California.

3 9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
4 preparation of this Agreement. This Agreement will not be construed against any Party on the basis that
5 the Party was the drafter or participated in the drafting, it being recognized that, because of the arms-
6 length negotiations between the Parties, all Parties have contributed equally to the preparation of this
7 Settlement Agreement.

8 10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that
9 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this
10 Agreement through arms-length negotiations, taking into account all relevant factors, current and
11 potential. The Parties further acknowledge that they are each represented by competent counsel and
12 that they have had an opportunity to consult with their counsel regarding the fairness and
13 reasonableness of this Settlement Agreement. In addition, the Mediator may execute a declaration
14 supporting the Settlement and the reasonableness of the Settlement and the Court may, in its discretion,
15 contact the Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
16 reasonable.

17 11. **Use of Documents and Data.** All originals, copies, and summaries of documents
18 and data provided to Class Counsel by Defendant in connection with the mediation or other settlement
19 negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and
20 may not be used in any way that violates any existing contractual agreement, statute, or rule.

21 12. **Headings.** The descriptive heading of any section or paragraph of this Agreement
22 is inserted for convenience of reference only and does not constitute a part of this Agreement.

23 13. **Invalidity of Any Provision.** Before declaring any provision of this Settlement
24 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
25 possible consistent with applicable precedents so as to define all provisions of this Settlement
26 Agreement valid and enforceable.

27 14. **All Terms Subject to Final Court Approval.** All amounts and procedures
28 described in this Settlement Agreement herein will be subject to final Court approval.

1 15. **Posting of the Final Approval Order and Judgment.** The Parties shall provide
2 the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered
3 by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on
4 its website within three (3) business days of receipt, and shall maintain the posting for sixty (60)
5 calendar days. No individualized notice of the Final Approval Order and Judgment will be required to
6 be provided to the Class.

7 16. **Notice.** All notices, demands or other communications given under this Agreement
8 will be in writing and deemed to have been duly given as of the third business day after mailing by United
9 States mail, addressed as follows:

10 *To Plaintiff and the Class:*

11 Edwin Aiwazian
12 Arby Aiwazian
13 Joanna Ghosh
14 Selena Matavosian
15 **LAWYERS for JUSTICE, PC**
16 410 West Arden Avenue, Suite 203
 Glendale, California 91203
 Tel.: (818) 265-1020
 Fax: (818) 265-1021
 E-Mail: edwin@calljustice.com; arby@calljustice.com; joanna@calljustice.com;
 selena@calljustice.com

17 *To Defendant:*

18 Amy L. Lessa
19 Nicole E. Stenoish
20 **Fisher & Phillips LLP**
21 4747 Executive Drive, Suite 1000
22 San Diego, California 92121
 Telep: (858) 597-9600
 Fax: (858) 597-9601
 E-Mail: alessa@fisherphillips.com; nstenoish@fisherphillips.com

23 17. **Execution in Counterparts.** This Agreement may be executed in one or more
24 counterparts by facsimile, electronically, or email which for purposes of this Agreement will be accepted
25 as an original. All executed counterparts and each of them will be deemed to be one and the same
26 instrument provided that counsel for the Parties will exchange between themselves signed counterparts.
27 Any executed counterpart will be admissible in evidence to prove the existence and contents of this
28 Agreement.

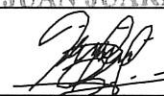
18. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under California Code of Civil Procedure section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

[Signatures included on next page]

1 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
2 Stipulation of Class Action and PAGA Settlement and Release between Plaintiff and Defendant:

3 IT IS SO AGREED.

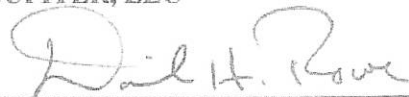
4
5
6 Dated: 04/10/2023, 2023

PLAINTIFF JUAN JUAREZ PEREZ
Electronically Signed

Notary AssureSign® 00135520-9af2-4c87-a152-af600173152b

Juan Juarez Perez, Plaintiff

JUPITER, LLC

8
9 Dated: 4/10, 2023



Jupiter, LLC, Defendant

By:

Title: Director of Operations

12 AGREED AS TO FORM:

13
14 Dated: 04/10, 2023

LAWYERS for JUSTICE, PC

By: 

Edwin Aiwan

Arby Aiwan

Joanna Ghosh

Selena Matavosian

Attorneys for Plaintiff

19 Dated: April 10, 2023

FISHER & PHILLIPS LLP

20
21 By: 

Amy L. Lessa

Nicole E. Stenoish

Attorneys for Defendant

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Juan Juarez Perez v. Jupiter, LLC
Superior Court of California for the County of Alameda, Case No. RG20084193

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Juan Juarez Perez ("Plaintiff") and Defendant Jupiter, LLC ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the case entitled *Juan Juarez Perez v. Jupiter, LLC*, Alameda County Superior Court, Case No. RG20084193 ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" means all current and former hourly-paid and/or non-exempt employees who were employed by Defendant in the State of California at any time during the Class Period.

"Class Member" means a member of the Class.

"Class Period" means the period from December 17, 2016 through [August 5, 2022, or the Alternate End Date, if applicable pursuant to Section IV.C.5 of the Settlement Agreement].

"Class Settlement" means the settlement and release of all Released Class Claims (as defined in Section III.D below).

"PAGA Group Member(s)" means all current and former hourly-paid and/or non-exempt employees who were employed by Defendant in the State of California at any time during the PAGA Period.

"PAGA Period" means the period from November 5, 2019 through [August 5, 2022, or the Alternate End Date, if applicable pursuant to Section IV.C.5 of the Settlement Agreement].

"PAGA Settlement" means the settlement and release of Released PAGA Claims (as defined in Section III.D below).

II. BACKGROUND OF THE LAWSUIT

On December 17, 2020, Plaintiff commenced a putative class action lawsuit by filing a Class Action Complaint for Damages in the Alameda County Superior Court, Case No. RG20084193. On January 12, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint"). Plaintiff alleges that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide accurate wage statements, keep requisite payroll records, reimburse business expenses, and thereby engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*, and conduct that gives rise to penalties under California Labor Code section 2698, *et seq.* ("PAGA"). Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.

Defendant adamantly denies that it did anything wrong and contends that it timely and properly paid all wages owed;

provided all required meal and rest breaks; properly issued accurate, itemized wage statements; provided all reimbursements for business expenses; and did not engage in any unfair competition or violations of PAGA. Defendant contends that none of the claims alleged by Plaintiff will succeed in court.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Class Action and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”).

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Phoenix Settlement Administrators as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Juan Juarez Perez as representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Edwin Aiwazian
Arby Aiwazian
Joanna Ghosh
Selena Matavosian
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Section III below.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff or to Class Members. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members. The Court has made no ruling on the merits of the Class Members’ claims and has determined only that certification of the Class for settlement purposes is appropriate under California law.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is Three Hundred Thousand Dollars (\$300,000) (the “Gross Settlement Amount”) to be paid by Defendant in two installment payments. The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments, which are subject to approval by the Court: (1) Class Counsel Fees Payment, consisting of attorneys’ fees in an amount up to 35% of the Gross Settlement Amount (i.e., \$105,000), and Litigation Expenses Payment consisting of reimbursement of litigation costs and expenses in an amount up to Thirty Thousand Dollars (\$30,000) to Class Counsel; (2) Service Payment in an amount up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff for his services in the Action; (3) PAGA Payment in the amount of Sixty Thousand Dollars (\$60,000); and (4) Settlement Administration Expenses in an amount not to exceed Eleven Thousand Dollars (\$11,000) to the Settlement Administrator. Note: A total of Sixty Thousand Dollars (\$60,000.00) from the Gross Settlement Amount has been allocated toward penalties under the Private Attorneys General Act (“PAGA Payment”), of which the LWDA will be paid 75% (i.e., \$45,000) (“LWDA Payment”) and the remaining 25% (i.e., \$15,000) to be distributed on a *pro rata* basis to PAGA Group Members based on their Workweeks during the PAGA Period (“PAGA Group Member Amount”).

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) and PAGA Group Members are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Group Member Amount (“Individual PAGA Payment”) based on the number of weeks each Class Member was employed by Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period and the number of weeks each PAGA Group Member was employed by Defendant as a hourly-paid and/or non-exempt employee in California during the PAGA Period (“Workweeks”).

The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the “Estimated Workweek Value” and multiplied each Class Member’s individual Workweeks during the Class Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share (which is listed in Section III.C below). Class Members who do not submit a valid and timely Request for Exclusion (“Participating Class Members”) will be issued payment of their final Individual Settlement Payment.

The Settlement Administrator has divided the PAGA Group Member Amount by the Workweeks of all PAGA Group Members during the PAGA Period to yield the “PAGA Workweek Value” and multiplied each PAGA Group Member’s individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment (which is listed in Section III.C below).

Each Individual Settlement Share will be allocated as 20% wages, which will be reported on an IRS Form W2, and 80% interest, penalties, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares (the net payment is referred to as “Individual Settlement Payment”). The employer’s share of payroll taxes and contributions with respect to the wages portion of Individual Settlement Shares shall be paid by Defendant separately and in addition to the Gross Settlement Amount. Individual PAGA Payments will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Participating Class Members and Individual PAGA Payments will be mailed to PAGA Group Members at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks Based on Defendant’s Records

According to Defendant’s records:

- From December 17, 2016 through [August 5, 2022, or the Alternate End Date, if applicable pursuant to Section IV.C.5 of the Settlement Agreement] (i.e., Class Period), you are credited as having worked [] Workweeks.
- From November 5, 2019 through [August 5, 2022, or the Alternate End Date, if applicable pursuant to Section IV.C.5 of the Settlement Agreement] (i.e., PAGA Period), you are credited as having worked [] Workweeks.

If you wish to dispute the Workweeks credited to you, you must submit a written dispute (“Workweeks Dispute”) to the Settlement Administrator at the address specified in Section IV.B below, by mail, postmarked **no later than [the Response Deadline]**. The Workweeks Dispute must: (1) contain the case name and number of the Action (*Juan Juarez Perez v. Jupiter, LLC*, Case No. RG20084193); (2) state your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed; (4) clearly state that you dispute the number of Workweeks credited to you and state the number of Workweeks you believe are correct; and (5) attach any documentation to support the dispute.

C. Your Estimated Individual Settlement Share and Individual PAGA Payment (if applicable)

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment (if applicable) is based on the number of Workweeks credited to you.

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

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [].

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Notice are only estimates. Your actual Individual Settlement Share and Individual PAGA Payment (if applicable) may be higher or lower.

D. Release of Claims

Upon the Effective Date, Plaintiff and each Participating Class Member will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all Released Class Claims. This release and waiver, however, shall be conditional on Defendant's full payment of the Gross Settlement Amount necessary to fund all payment obligations.

Upon the Effective Date, Plaintiff, the State of California, and all PAGA Group Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all Released PAGA Claims. This release and waiver, however, shall be conditional on Defendant's full payment of the Gross Settlement Amount necessary to fund all payment obligations.

"Released Class Claims" means any and all claims, rights, demands, liabilities, and causes of action of any nature or description, under state, federal, or local law, that were litigated in the Operative Complaint against Defendant or could have been litigated based on the facts and circumstances alleged in the Operative Complaint against Defendant, arising during the period from December 17, 2016 through [date of Preliminary Approval], including but not limited to, all claims under the California Labor Code, Industrial Welfare Commission Wage Orders, related orders of the California Industrial Commission, Business and Professions Code section 17200 *et seq.*, regulations, and/or other provisions of law for failure to pay overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse necessary business expenses, and violation of California's unfair competition law (California Business and Professions Code section 17200, *et seq.*) based on the aforementioned, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order Nos. 1-2001, 4-2001, 5-2001, 7-2001, and 8-2001.

"Released PAGA Claims" means any and all claims for civil penalties under the Private Attorneys General Act, California Labor Code Section 2698, *et seq.*, arising out of the facts alleged in Plaintiff's LWDA Letter, arising during the period from November 5, 2019 through [date of Preliminary Approval], for failure to pay overtime wages, failure to provide compliant meal period and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse necessary business expenses, in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order Nos. 1-2001, 4-2001, 5-2001, 7-2001, and 8-2001.

"Released Parties" means Defendant Jupiter, LLC, and its former, present, and future owners, parents, predecessors, successors, affiliates, subsidiaries, divisions, investors, and all of their current, former or future officers, directors, members, managers, agents, consultants, employees, attorneys, accountants, representatives, partners, shareholders, joint ventures, insurers, successors, and assigns.

E. Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel

Class Counsel will seek attorneys' fees in an amount of up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., an amount of up to \$105,000) ("Class Counsel Fees Payment") and reimbursement of litigation costs and expenses in an amount of up to Thirty Thousand Dollars (\$30,000.00) ("Litigation Expenses Payment"), subject to approval by the Court. The Class Counsel Fees Payment and Litigation Expenses Payment granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Service Payment to Plaintiff

Plaintiff will seek the amount of Seven Thousand Five Hundred Dollars (\$7,500) (“Service Payment”), in recognition of his services in connection with the Action. The Service Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, will be paid to Plaintiff in addition to his Individual Settlement Payment and Individual PAGA Payment that he is entitled to under the Settlement.

G. Settlement Administration Expenses to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Eleven Thousand Dollars (\$11,000) (“Settlement Administration Expenses”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, written objections to the Class Settlement, and Workweeks Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

H. When Will I Receive my Settlement Payment(s)?

Defendant shall fund the Gross Settlement Amount via two installment payments, each of which shall be in the amount of one-half of the Gross Settlement Amount (i.e., \$150,000). Within thirty (30) days of the Effective Date, Defendant shall provide the Settlement Administrator with the first installment payment of one-half of the Gross Settlement Amount (i.e., \$150,000) (“First Installment”). No later than twelve (12) months after the Effective Date, Defendant shall provide the Settlement Administrator the second installment payment of the remaining one-half of the Gross Settlement Amount (i.e., \$150,000) (“Second Installment”).

Distributions of Individual Settlement Payments to Participating Class Members and Individual PAGA Payments to PAGA Group Members shall occur no later than seven (7) calendar days after the funding of the First Installment.

“Effective Date” means the date when all of the following events have occurred: (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant’s Counsel; (2) the Court has given and entered preliminary approval to the Settlement; (3) the Class Notice has been mailed to the Class Members, providing them with an opportunity to object to the terms of the Class Settlement or opt out of the Class Settlement; (4) the Court has held a Final Approval Hearing and entered a Final Approval Order and Judgment; and (5) the later of the following events: five (5) business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has been filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Settlement and receive money from the Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims described in Section III.D above.

If you are a PAGA Group Member, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims described in Section III.D above.

Class Members and PAGA Group Members will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless they retain your own counsel, in which event they will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Class Settlement

If you do not wish to participate in the Class Settlement, you must seek exclusion from the Class Settlement by sending a written request (“Request for Exclusion”) to the Settlement Administrator by mail at the specified address below, postmarked **no later than [Response Deadline]**.

[Settlement Administrator]

[Mailing Address]

A Request for Exclusion must: (1) contain the case name and number of the Action (*Juan Juarez Perez v. Jupiter, LLC*, Case No. RG20084193); (2) state your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed; and (4) clearly state that you request to be excluded from the Class Settlement.

If the Court grants final approval of the Settlement, any Class Member who submits a valid and timely Request for Exclusion will not be entitled to receive any payment an Individual Settlement Payment, will not be bound by the Class Settlement (or the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a valid and timely Request for Exclusion will be deemed Participating Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon. PAGA Group Members will be bound to the PAGA Settlement (and the release of Released PAGA Claims described in Section III.D above) and will still be issued an Individual PAGA Payment, regardless of whether they submit a Request for Exclusion.

C. Object to the Class Settlement

You can object to the terms of the Class Settlement as long as you have not submitted a Request for Exclusion, by submitting a written objection to the Settlement Administrator by mail, postmarked **no later than [Response Deadline]**, or presenting your objection at the Final Approval Hearing.

A written objection must: (1) contain the case name and number of the Action (*Juan Juarez Perez v. Jupiter, LLC*, Case No. RG20084193); (2) state your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed; (4) clearly set forth the grounds for the objection; (5) attach any documentation that the objection is based upon; and (6) identify any counsel representing you with respect to the objection.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 23 of the Alameda County Superior Court, located at René C. Davidson Courthouse, 1225 Fallon Street, Oakland, California 94612, on [date], at [time], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Class Counsel Fees Payment and Litigation Expenses Payment to Class Counsel, Service Payment to Plaintiff, and Settlement Administration Expenses to the Settlement Administrator.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to.

Please visit the Court’s website for the most up-to-date information regarding the impact of COVID-19 on the operations of the Court and any requirements that may apply for accessing Court facilities: <http://www.alameda.courts.ca.gov/>

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Action for a fee by visiting the public terminals at the Civil Division, located at the George E. McDonald Hall of Justice, 2233 Shoreline Drive, Alameda, California 94501, during business hours, or by online by visiting the following website: <https://eportal.alameda.courts.ca.gov/?q=Home>

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION

REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.