

Kane Moon (SBN 249834)  
kane.moon@moonyanglaw.com  
H. Scott Leviant (SBN 200834)  
scott.leviant@moonyanglaw.com  
**MOON & YANG, APC**  
1055 W. Seventh St., Suite 1880  
Los Angeles, California 90017  
Telephone: (213) 232-3128  
Facsimile: (213) 232-3125

*Attorneys for Plaintiff* RUTH RAMIREZ

**MELMED LAW GROUP P.C.**  
Jonathan Melmed, CA Bar No. 290218  
1801 Century Park East, Suite 850  
Los Angeles, California 90067  
Telephone: (310) 824-3828  
jm@melmedlaw.com

*Attorneys for Plaintiff* JORGE RUIZ QUEZADA

**CDF LABOR LAW LLP**  
John R. Giovannone, State Bar No. 239366  
707 Wilshire Boulevard, Suite 5150  
Los Angeles, CA 90017  
Telephone: (213) 612-6300  
jgiovannone@cdflaborlaw.com

*Attorneys for Defendant* C&W FACILITY SERVICES, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RUTH RAMIREZ, et al.,  
Plaintiffs,

vs.

C&W FACILITY SERVICES, INC., et al.,  
Defendants.

Case No.: 2:20-CV-11319-CAS  
consolidated with  
CV 21-03458JVS(PLAx)

CLASS ACTION

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

Complaint filed: November 3, 2020  
Action Removed: December 14, 2020  
Trial date: Not set

## **JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

This Joint Stipulation of Class and Representative Action Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiffs RUTH RAMIREZ and JORGE RUIZ QUEZADA, individually, and on behalf of all others similarly situated, (“Plaintiffs” or “Class Representatives”), and Defendant C&W FACILITY SERVICES, INC. (“C&W” or “Defendant”). Plaintiffs and Defendant are collectively referred to herein as “the Parties.”

THE PARTIES STIPULATE AND AGREE as follows:

### **DEFINITIONS**

1. For purposes of this Settlement, “Complaint” refers to the Consolidated Class Action Complaint, or any subsequent operative complaint at the time the Court grants Preliminary Approval of this Settlement.

2. For purposes of this Settlement, this matter, entitled *Ruth Ramirez v. C&W Facility Services, Inc.*, Case No.: 2:20-CV-11319-JVS (PVCx), which includes the consolidated action entitled *Jorge Ruiz Quezada v. C&W Facility Services, Inc.*, Case No.: 2:21-CV-03458-JVS (PVCx), is referred to herein as the “Action.”

3. For purposes of this Settlement, the “Class Period” is November 3, 2016 through October 3, 2022, with the sole exception that if the pay period total exceeds 125,704 by more than 10%, the Class Period shall end on the day before the work week total exceeds such number.

4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt employees of Defendant who worked for Defendant in California during the Class Period, excluding non-exempt employees who worked at Amazon.com, Inc. (“Amazon”) locations and non-exempt employees who were unionized<sup>1</sup>. “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. The Parties’ best estimate is that the Class includes approximately 125,704 work weeks.

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<sup>1</sup> The Parties agreed to exclude non-exempt employees in California who worked at Amazon’s locations, and non-exempt employees who were unionized.

1           5.       For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

2           6.       For purposes of this Settlement, “Covered Workweeks” means the number of weeks a  
3 Class Member worked at Defendant’s locations in California during the Class Period.

4           7.       For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after  
5 the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on  
6 which Settlement Class Members may submit a request for exclusion or written objection to the  
7 Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days  
8 after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as  
9 expressly described herein.

10          8.       For purposes of the Settlement, “Defendant’s Counsel” means CDF LABOR LAW LLP.

11          9.       For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys  
12 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

13          10.       For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross  
14 Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims.  
15 The Parties have agreed that the PAGA Allocation will be \$200,000 from the Gross Settlement Amount.  
16 Pursuant to PAGA, Seventy Five Percent (75%), or \$150,000, of the PAGA Allocation will be paid to the  
17 Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty Five  
18 Percent (25%), or \$50,000, of the PAGA Allocation will be included in the Net Settlement Amount for  
19 PAGA Employees (“PAGA Settlement Payment”).

20          11.       For purposes of this Settlement, “PAGA Period” means the period between November 20,  
21 2019 through October 3, 2022.

22          12.       For purposes of this Settlement, “PAGA Employee” means all Class Members that worked  
23 during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA  
24 Employees are “aggrieved employees” as defined pursuant to PAGA.

25          13.       For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods  
26 each PAGA Employee worked during the PAGA Period.

27          14.       For purposes of this Settlement, “PAGA Representatives” means Plaintiffs.

28          15.       For purposes of this Settlement, “Released PAGA Claims” means all claims that have been

1 pled or could have been pled, based upon the factual allegations and issues set forth in the Notice to the  
2 LWDA and alleged in the Complaint, including civil penalties under PAGA, fees, and all other claims and  
3 allegations made or which could have been made in the Action based on the facts and allegations pled in  
4 Plaintiff's Notice to the LWDA and the Complaint. Plaintiffs' Notices to the LWDA are attached hereto as  
5 **Exhibit "B."**

6 16. For purposes of this Settlement, "Settlement Payments" means all of the payments to  
7 Settlement Class Members (the "Settlement Class Payments") and all of the payments to PAGA  
8 Employees (the "PAGA Settlement Payment").

### 9 **STIPULATED BACKGROUND**

10 17. On November 3, 2020, Plaintiff RUTH RAMIREZ filed a putative Class Action alleging  
11 the following labelled causes of action: (1) Failure to Pay Minimum Wage and Straight Time Wages [Cal.  
12 Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code  
13 §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to  
14 Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business  
15 Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code  
16 §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8)  
17 Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. The *Ramirez* matter was  
18 subsequently removed to federal court. On November 20, 2020, Plaintiff JORGE RUIZ QUEZADA filed  
19 a putative Class Action alleging claims for relief substantially similar to the claims asserted in the *Ramirez*  
20 matter. On April 20, 2021, the District Court for the Northern District of California granted a motion to  
21 transfer the *Quezada* action to the United States District Court, Central District of California, which, on  
22 April 26, 2021, issued Notice of Receipt of Case Transfer, assigning the action Case No. 2:21-cv-03458-  
23 JVS-PLA. The Parties subsequently stipulated to consolidate the *Ramirez* and *Quezada* matters. On June  
24 3, 2021, the Court issued an Order consolidating the *Ramirez* and *Quezada* matters (the "Action").

25 18. On June 16, 2021, Plaintiffs filed a Consolidated Class Action Complaint that incorporated  
26 the claims for relief asserted in both the *Ramirez* and *Quezada* matters, including a cause of action for  
27 Civil Penalties Under PAGA [Cal. Lab. Code § 2699, *et seq.*].

28 19. Solely for purposes of settling this case, the Parties and their respective counsel stipulate

1 and agree that the requisites for establishing class certification with respect to the Class Members have  
2 been met and are met.

3 20. Should, for whatever reason, the Settlement not become effective, the fact that the Parties  
4 were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be  
5 admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be  
6 certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly reserves  
7 its right to oppose claim or class certification in this or any other action should this Settlement not become  
8 effective.

9 21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the  
10 claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this  
11 lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiffs' claims,  
12 Defendant contends, among other things, that Plaintiffs and the Class Members have been paid proper  
13 wages, have been provided legally compliant meal periods, have been provided legally compliant rest  
14 periods, have received proper reimbursement for necessary business expenses, have been paid timely  
15 wages upon separation of employment, have been provided with accurate itemized wage statements, and  
16 have been paid timely wages during employment. Defendant contends, among other things, that it has  
17 complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial  
18 Welfare Commission. Furthermore, with respect to all claims, Defendant contends that it has complied at  
19 all times with the California Business and Professions Code. Additionally, Defendant's Counsel believes  
20 they have obtained enough information to file a Motion To Deny Class Certification, as well as a Motion  
21 For Summary Judgment as to Plaintiffs' individual claims. The Court has not made any findings of  
22 liability as to Defendants and the Court has not determined that class certification is warranted in this  
23 Action. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever and without  
24 admitting or conceding that class certification or representative treatment is appropriate for any purpose  
25 other than for this Settlement, Defendant has agreed to settle the Action on the terms and conditions set  
26 forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Action. Any  
27 stipulations or statements by Defendant contained in this Agreement are made for settlement purposes  
28 only.

22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint.

23. Class Counsel has conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents, has retained an expert to analyze the class data, and has diligently pursued an investigation of the claims of the Class against Defendant. Class Counsel believes it has obtained enough information to file a Motion For Class Certification. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues. Defendant and Defendant's Counsel also agree that the Settlement is fair and in the best interest of the Class.

24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

### **PRIMARY TERMS OF SETTLEMENT**

26. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

(a) It is agreed by and among the Settlement Class Members, PAGA Employees, and Defendant that this case and any claims, damages, or causes of action arising out of the disputes which are the subject of this case, be settled and compromised as between the Settlement Class Members, PAGA Employees, and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.

(b) Effective Date: The terms of settlement embodied in this Settlement shall become effective when all of the following events have occurred: (i) this Joint Stipulation

1 of Settlement has been executed by all Parties and their respective counsel; (ii) the  
2 Court has given preliminary approval to the Settlement; (iii) the Notice has been  
3 given to the Class, providing them with an opportunity to dispute information  
4 contained in the Notice, to opt out of the Settlement, or to object to the Settlement;  
5 (iv) the Court has held a final approval hearing and entered a final order and  
6 judgment certifying the Class and approving this Settlement; and (v) the later of the  
7 following events: (a) seven calendar days have passed since final approval is  
8 granted if there are no objections to the settlement; (b) 35 days following notice of  
9 entry of the Court's final order approving the Settlement if there are any objections  
10 by any Class Member; (c) or if any appeal, writ or other appellate proceeding  
11 opposing this Settlement has been filed within 30 days following notice of entry of  
12 the Court's final order approving the Settlement, then 21 days after when any  
13 appeal, writ or other appellate proceeding opposing the Settlement has been  
14 resolved finally and conclusively with no right to pursue further remedies or relief.  
15 In this regard, it is the intention of the Parties that the Settlement shall not become  
16 effective until the Court's order approving the Settlement is completely final, and  
17 there is no further recourse by an appellant or objector who seeks to contest the  
18 Settlement.

19 (c) Gross Settlement Amount: Defendant's maximum total payment under the  
20 Settlement, including all attorney's fees and costs, all individual Settlement  
21 payments made to Class Members, employees' share of payroll taxes, the Service  
22 Payment to the named Plaintiff, the costs of settlement administration, the PAGA  
23 Allocation, and any other payments provided by this Settlement, is \$2,500,000.00  
24 ("Gross Settlement Amount"), subject to the Escalator Clause and except that, to  
25 the extent that any portions of the Class Members' Settlement Payments constitute  
26 wages, Defendant will be separately responsible for any employer payroll taxes  
27 required by law, including the employer FICA, FUTA, and SDI contributions.

28 (d) Escalator Clause: The number of Covered Workweeks is estimated to be 125,704.

1 If it is later determined that, through the Class Period, the number of actual  
2 Covered Workweeks during the Class Period exceeds 10% of the estimated  
3 Covered Workweeks (i.e., exceeds 138,274 workweeks), Defendant will end the  
4 Class Period on the date the number of pay periods exceeds 138,274 (the  
5 “Escalator Clause”). The Gross Settlement Amount will not be reduced for any  
6 reason. The agreed upon Gross Settlement Amount is based, in part, on data  
7 produced by Defendant in preparation for mediation that identified approximately  
8 125,704 work weeks worked by Class Members, from approximately November 3,  
9 2016 through March 11, 2022. The Gross Settlement Amount is a material term of  
10 this Agreement. To the extent Plaintiffs or the Court seek to require Defendant to  
11 pay more than the Gross Settlement Amount (other than as required under this  
12 Settlement Agreement), Defendants shall retain the right, in the exercise of their  
13 sole discretion, to nullify the Settlement Agreement.

- 14 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will  
15 revert to Defendant.
- 16 (f) No Claims Required: Class Members will not be required to submit a claim to  
17 receive their Settlement payment.
- 18 (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by  
19 deducting from the Gross Settlement Amount (\$2,500,000.00) the following sums,  
20 subject to approval by the Court: (1) attorney’s fees (not to exceed 33 1/3% of the  
21 Gross Settlement Amount, or \$833,333.33); (2) reasonable litigation costs (not to  
22 exceed \$30,000.00); (3) the Service Payments (not to exceed \$7,500.00 to the  
23 named Plaintiffs [for a total of \$15,000.00]); (4) the PAGA Penalty Payment in the  
24 amount of \$150,000.00 (which is 75% of the PAGA Allocation); and (5) costs of  
25 settlement administration (estimated not to exceed \$40,000.00). Settlement  
26 Payments to the Class Members will be calculated by the Settlement Administrator  
27 and paid out of the Net Settlement Amount as set forth below.
- 28 (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the

Settlement Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any **employer** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Except for any employer payroll taxes, it is understood and agreed that Defendant's maximum total liability under this Settlement shall not exceed the Gross Settlement Amount. The Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.

(i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of the Net Settlement Amount (less the PAGA Settlement Payments totalling \$50,000.00), as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows: 
$$\frac{[\text{Workweeks worked by a Settlement Class Member}]}{[\text{Sum of all Covered Workweeks worked by all Settlement Class Members}]} \times [\text{Net Settlement Amount} - \text{all PAGA Settlement Payments}] =$$
 individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement

1 Administrator. Class Members will not be permitted to exclude themselves from  
2 this portion of the Settlement. The pro-rata share will be determined by comparing  
3 the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to  
4 the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period  
5 as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum of all  
6 PAGA Pay Periods worked by all PAGA Employees] × [PAGA Settlement  
7 Payment] = individual PAGA Employee's portion of the PAGA Settlement  
8 Payment. PAGA Settlement Payments to PAGA Employees in the appropriate  
9 amounts will be distributed by the Settlement Administrator by mail to the PAGA  
10 Employees at the same time Settlement Class Payments issue to the Settlement  
11 Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the  
12 California Controller's Office, as set forth below. The LWDA's PAGA Penalty  
13 Payment will issue to the LWDA at the same time Settlement Payments issue to  
14 the Settlement Class.

15 (k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class  
16 Payments will be allocated as follows: 33 1/3% to wages, 33 1/3% to penalties and  
17 33 1/3% to interest. The PAGA Settlement Payment shares to PAGA Employees  
18 will be entirely allocated to penalties. Appropriate federal, state and local  
19 withholding taxes will be taken out of the wage allocations, and each Class  
20 Member will receive an IRS Form W-2 with respect to this portion of the  
21 Settlement Payment. The employer's share of payroll taxes and other required  
22 withholdings will be paid as set forth above, including but not limited to the  
23 Defendant's FICA and FUTA contributions, based on the payment of claims to the  
24 Class Members. Class Members are responsible to pay appropriate taxes due on  
25 the Settlement Payments they receive. The Settlement Administrator will issue to  
26 each Settlement Class Member an Internal Revenue Service Form W-2 and  
27 comparable state forms with respect to the wage allocation and a Form 1099 with  
28 respect to the penalties and interest allocations, to the extent required by law.

1 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement  
2 Payments to individual Class Members shall be deemed to be paid to such Class  
3 Member solely in the year in which such payments actually are received by the  
4 Class Member. It is expressly understood and agreed that the receipt of such  
5 Settlement Payments will not entitle any Class Member to additional compensation  
6 or benefits under any company bonus, contest or other compensation or benefit  
7 plan or agreement in place during the period covered by the Settlement, nor will it  
8 entitle any Class Member to any increased retirement, 401(k) benefits or matching  
9 benefits or deferred compensation benefits, including, without limitation, all plans  
10 subject to the Employee Retirement and Income Security Act of 1974 (“ERISA”).  
11 It is the intent that the Settlement Payments provided for in this Settlement are the  
12 sole payments to be made by Defendant to the Class Members, and that the Class  
13 Members are not entitled to any new or additional compensation or benefits as a  
14 result of having received the Settlement Payments (notwithstanding any contrary  
15 language or agreement in any benefit or compensation plan document that might  
16 have been in effect during the period covered by this Settlement). Likewise, none  
17 of the payments made pursuant to the Settlement Agreement shall be considered to  
18 alter the terms or to grant any rights to additional payments under any applicable  
19 Collective Bargaining Agreement.

20 (m) Attorney’s Fees and Costs: Subject to approval by the Court, Defendant will not  
21 object to Class Counsel’s application for attorney’s fees not to exceed 33 1/3% of  
22 the Gross Settlement Amount (\$833,333.33) and reimbursement of litigation costs  
23 and expenses not to exceed \$30,000.00. Approved attorney’s fees and litigation  
24 costs shall be paid at the same time Settlement Payments issue to the Settlement  
25 Class. Should the Court approve attorney’s fees and costs in an amount less than  
26 that set forth above, the difference between the lesser amount(s) approved by the  
27 Court and the attorney’s fees and costs set forth above shall be added to the Net  
28 Settlement Amount.

(n) General Release and Service Payment: Subject to Court approval, and in exchange for a general release, Defendant will not object to Class Counsels' application for an additional payment of up to \$7,500.00 to each Plaintiff as consideration for a general release of all claims and as a payment for service as Class Representatives ("Service Payment"). It is understood that the Service Payment is in addition to the individual Settlement Payment to which a Class Representative is entitled to along with the other Class Members. In exchange, Plaintiffs have agreed to release all claims, whether known or unknown, under federal law or state law against the Releasees, to the extent permitted by law, through the Class Period ("Plaintiffs' Released Claims"). Plaintiffs understand that this release includes unknown claims and that Plaintiffs are, as a result, waiving all rights and benefits afforded by Civil Code § 1542, which provides:

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

Specifically excluded from Plaintiffs' Released Claims are any claims for workers' compensation benefits. The Service Payment will issue at the same time all Settlement Payments are mailed to the Settlement Class. The Court's approval of the Service Payment to named Plaintiffs is not a material term of the Settlement Agreement. If the Court approves only a lesser amount than that requested by Class Counsel for a Service Payment, the other terms of the Settlement and this Agreement shall apply. The Court's refusal to approve the Service Payment requested by Class Counsel does not give the Plaintiffs or Class Counsel any basis to abrogate the Settlement Agreement. Any amount of a Service Payment requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

- 1 (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the  
2 Service Payment to the Plaintiff. The Plaintiffs will be individually responsible for  
3 correctly characterizing this compensation on personal income tax returns for tax  
4 purposes and for paying any taxes on the amounts received. Should the Court  
5 approve a Service Payment in an amount less than that set forth above, the  
6 difference between the lesser amount(s) approved by the Court and the Service  
7 Payment amount(s) set forth above shall be added to the Net Settlement Amount.  
8 Plaintiffs agree not to opt out or object to the Service Payments as the Class  
9 Representatives.
- 10 (p) Settlement Administrator: The Settlement Administrator will be Phoenix  
11 Settlement Administrators, or such Settlement Administrator as may be mutually  
12 agreeable to the Parties and approved by the Court. The Parties agree that  
13 Settlement Administration Costs should not reasonably exceed \$40,000.00, and the  
14 Settlement Administrator's bid for settlement administration services in the amount  
15 of \$16,000 was selected for the reasonable price and the quality of administration  
16 services provided by Phoenix Settlement Administrators. The costs of the  
17 Settlement Administrator for work done shall be paid regardless of the outcome of  
18 this Settlement.
- 19 (q) Funding of Settlement Account: Defendant will fund the settlement account with  
20 the Gross Settlement Amount including all employer related payroll taxes within  
21 30 calendar days of the Effective Date of the Settlement provided that the  
22 Settlement Administrator has provided the Parties with an accounting of the  
23 amounts to be paid by Defendant pursuant to the terms of this Settlement and has  
24 provided Defendant with the settlement account information/wiring instructions  
25 needed to effectuate the funding.
- 26 (r) Mailing of Settlement Payments: The Settlement Administrator shall cause the  
27 Settlement Payments to be mailed to the Class Members within 28 calendar days of  
28 the Effective Date of the Settlement, provided that the Settlement Administrator

has provided the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of this Settlement and Defendant has fully funded the Settlement within 14 calendar days of the Effective Date.

(s) Notice of Settlement: Within 14 calendar days of the Court’s preliminary approval of the Settlement, Defendant will provide to the Settlement Administrator a list in Microsoft Excel format containing each Class Member’s (i) full name, (ii) last known address, (iii) Social Security Number, and (iv) the total number of Covered Workweeks for each Class Member during the Class Period (“Class List”). Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will perform an NCOA check and will mail the notice to the Class Members setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the proposed class action Settlement (“Class Notice”). The Administrator will skip-trace returned mail and re-mail the notice to the new addresses within five calendar days. These deadlines are subject to court approval. For each Class Member, there will be pre-printed information on the mailed Class Notice, based on Defendant’s records, stating the Class Member’s Covered Workweeks during the Class Period and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment that will be distributed irrespective of any exclusion request. The pre-printed information based on Defendant’s records shall be presumed to be correct. A Class Member may dispute the pre-printed information on the Notice as to his or her Covered Workweeks during the Class Period. Class Members must submit any dispute regarding the information on the Class Notice to the Settlement Administrator as to his or her Covered Workweeks within the Response Deadline. Unless a disputing Class Member submits documentary evidence in support of his or her dispute, the records of Defendant will be dispositive.

(t) Settlement Notice Language: The Notice will issue in English and Spanish.

1 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

2 Class Members submitting a Request for Exclusion will nevertheless receive their  
3 pro-rata share of the PAGA Settlement Payment. If the Court approves the  
4 compromise of the PAGA Claim, all Class Members are bound by the Court's  
5 resolution of that Claim. Plaintiffs shall serve a notice of settlement on the  
6 California Labor and Workforce Development Agency at or before the time  
7 Plaintiffs file the motion for preliminary approval.

8 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of  
9 Defendant's records used to calculate Covered Workweeks, and the Parties'  
10 counsel cannot resolve the dispute informally, the matter will be referred to the  
11 Settlement Administrator. The Settlement Administrator will review Defendant's  
12 records and any information or documents submitted by the Class Member and  
13 issue a decision regarding the dispute. If the Settlement Administrator's decision is  
14 not accepted by the Parties and the disputing Class Member, the dispute will be  
15 submitted to the Court for resolution at the time of the final approval hearing. The  
16 Class Member must submit information or documents supporting his or her  
17 position to the Settlement Administrator prior to the expiration of the Response  
18 Deadline. Information or documents submitted after the expiration of the  
19 Response Deadline will not be considered by the Settlement Administrator, unless  
20 otherwise agreed to by the Parties. In the event that the number of Covered  
21 Workweeks is increased for any Class Member, then the Settlement Administrator  
22 will recalculate the Individual Settlement Payments accordingly; in no event will  
23 Defendant be required to increase the Gross Settlement Amount except for as set  
24 forth in the Escalator Clause.

25 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class  
26 Member may request to be excluded from the Class by mailing a "Request for  
27 Exclusion" from the Settlement within the Response Deadline. A Request for  
28 Exclusion must clearly and unequivocally state a desire to be excluded from the

Class, with a statement comparable to the following:

“I WANT TO BE EXCLUDED FROM THE CLASS IN THE  
*RUTH RAMIREZ V. C&W FACILITY SERVICES, INC.*, CASE  
NO.: 2:20-CV-11319-JVS (PVCX).”

No specific wording is required to state a Request for Exclusion, so long as it is clear and unequivocal. Any Request for Exclusion must include the name, address, telephone number, last four digits of the Class Member’s Social Security Number, and the signature of the Class Member requesting exclusion to protect against falsified Requests for Exclusion. Any such request must be made in accordance with the terms of the Class Notice, and the Class Notice will advise Class Members of these requirements. Any Class Member who timely requests exclusion in compliance with these requirements (i) shall not have any rights under this Settlement other than a right to receive a pro-rata share of the portion of the PAGA payment allocated to the Class Members if the Class Member is also PAGA Employee; (ii) shall not be entitled to receive any Settlement Payments under this Settlement other than as stated in (i) in this paragraph; and (iii) shall not be bound by this Settlement or the Court’s Order and Final Judgment other than as it applies to the PAGA Claim.

- (x) Right of Settlement Class Member to Object to The Settlement: Any Class Member may object to the Settlement. To object, the Class Member may (1) appear in person (including through an audio or video call appearance as required or authorized by the Court) at the Final Approval Hearing to explain any objection, (2) have an attorney object for the Class Member, or (3) submit a simple written brief or statement of objection to the Settlement Administrator. If any Class Member chooses to submit a written objection, the written objection should contain sufficient information to confirm the identity of the objector and the basis of the objection, including (1) the full name of the Settlement Class Member; (2) the signature of the Settlement Class Member; (3) the grounds for the objection; and (4) be postmarked within the Response Deadline to permit adequate time for

processing and review by the Parties of the written statement or objection. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to declaration from the Settlement Administrator). A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendants' Counsel may file responses to any written objections submitted to the Court.

(y) Opt-in to Release Under Fair Labor Standards Act: Settlement Class Members will be advised that they will opt in to a settlement of claims for unpaid compensation under the Fair Labor Standards Act ("FLSA") by cashing or otherwise depositing the check for their Settlement Class Payment. This will be set forth in the Class Notice.

(z) Tax Liability: Class Counsel and Defendant make no representations as to the tax treatment or legal effect of payments called for hereunder, and Plaintiffs and the Settlement Class Members are not relying on any statement or representation by Class Counsel or Defendant in this regard. Plaintiffs and Settlement Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described herein. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other

1 applicable tax law, is changed after the date of this Agreement, the processes set  
2 forth in this Section may be modified in a manner to bring Defendant into  
3 compliance with any such changes.

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

1 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX  
2 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION  
3 CONTEMPLATED BY THIS AGREEMENT.

4 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

5 27. Subject to the Court's approval, and subject to reconsideration by the Parties after a  
6 competitive bidding process, the Parties have agreed to the appointment of Phoenix Settlement  
7 Administrators to perform the customary duties of Settlement Administrator. The Settlement  
8 Administrator will mail the Notice, both in English and Spanish, to the Class Members.

9 28. The Settlement Administrator will independently review the Covered Workweeks and  
10 PAGA Pay Periods attributed to each Class Member and will calculate the estimated amounts due to each  
11 Class Member and the actual amounts due to each Settlement Class Member and PAGA Employee in  
12 accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative form,  
13 the substance of its findings. The Settlement Administrator shall be granted reasonable access to  
14 Defendant's records in order to perform its duties.

15 29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement  
16 Amount from Defendants, the Settlement Administrator will issue and send out the Settlement Payment  
17 checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in  
18 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's  
19 performance of its duties shall be referred to the Court, if necessary, which will have continuing  
20 jurisdiction over the terms and conditions of this Settlement until all payments and obligations  
21 contemplated by this Settlement have been fully carried out.

22 30. The Settlement Administrator will post the final judgment approving the Settlement on a  
23 website maintained by the Settlement Administrator for a period of not less than 90 calendar days after the  
24 final judgment is entered. The website will use a page on the Settlement Administrator's website, and not  
25 a custom domain for this Settlement. The address of that website will be included in the Class Notice.

26 **ATTORNEY'S FEES AND COSTS**

27 31. In consideration for resolving this matter and in exchange for the release of all claims by  
28 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to

1 Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount  
2 (\$833,333.33 of \$2,500,000.00) and litigation costs not to exceed \$30,000.00. The amounts set forth  
3 above will cover all work performed and all fees and costs incurred to date, and all work to be performed  
4 and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and  
5 administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve  
6 a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s)  
7 and the maximum amount set forth above shall be added to the Net Settlement Amount. As with the  
8 Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be  
9 paid to Class Counsel, within 28 calendar days of the Effective Date of the Settlement, provided that the  
10 Settlement Administrator has provided the Parties with an accounting of the amounts to be paid by  
11 Defendant pursuant to the terms of this Settlement and Defendant has fully funded the Settlement within  
12 14 calendar days of the Effective Date. Class Counsel shall disclose to the Court any fee sharing  
13 agreements in existence. In the event that the Court awards less than 25% of the Gross Settlement  
14 Amount for attorney's fees, Class Counsel shall retain the right to appeal only that portion of any Final  
15 Approval Order and Judgment.

### 16 **THE NOTICE PROCESS**

17 32. A Notice in approximately the form attached hereto as Exhibit "A," and as approved by the  
18 Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. If required  
19 under this Agreement, the Notice shall be translated into Spanish so that Spanish and English language  
20 versions of the Notice are included in the mailing. Any returned envelopes from this mailing with  
21 forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

- 22 (a) Within 14 calendar days from the date of preliminary approval of this Settlement  
23 by the Court, Defendant shall provide to the Settlement Administrator a class  
24 database containing the following information for each Class Member a list in  
25 Microsoft Excel format (or other format acceptable to the Settlement  
26 Administrator) containing each Settlement Class Member's (1) full name, (2) last  
27 known address, (3) Social Security Number, and (4) the total number of Covered  
28 Workweeks for each Class Member in California during the Class Period as a non-

1 exempt employee ("Class List"). This database shall be based on Defendant's  
2 payroll and other business records. The Settlement Administrator will run a check  
3 of the Class Members' addresses against those on file with the U.S. Postal  
4 Service's National Change of Address List; this check will be performed only once  
5 per Class Member by the Settlement Administrator. Absent mutual written  
6 agreement of counsel for the Parties or Court order, the Settlement Administrator  
7 will keep this database confidential and secure and use it only for the purposes  
8 described herein, and will return this database to Defendant upon final approval of  
9 the settlement or destroy electronic records containing the database after the  
10 Settlement is final and all payments are distributed as required under this  
11 Agreement. However, Plaintiffs' Counsel shall be entitled to review anonymized  
12 data showing the workweeks worked by each Class Member, with Class Member  
13 identity concealed through use of an employee number or number assigned by the  
14 Settlement Administrator.

15 (b) Within 14 calendar days after the Class database is provided to the Settlement  
16 Administrator, the Settlement Administrator will mail the Notices to the Class  
17 Members by First Class United States mail.

18 (c) Class Notices returned to the Settlement Administrator as non-deliverable on or  
19 before the initial Response Deadline shall be resent to the forwarding address, if  
20 any, on the returned envelope. A returned Class Notice will be forwarded by the  
21 Settlement Administrator any time that a forwarding address is provided with the  
22 returned mail. If there is no forwarding address, the Settlement Administrator will  
23 do a computer search for a new address using the Class Member's social security  
24 number and/or other information. In any instance where a Class Notice is re-  
25 mailed, that Class Member will have until the extended Response Deadline as  
26 described above. A letter prepared by the Settlement Administrator will be  
27 included in the re-mailed Class Notice in that instance, stating the extended  
28 Response Deadline if different than the original Response Deadline. Upon

1 completion of these steps by the Settlement Administrator, Defendant and the  
2 Settlement Administrator shall be deemed to have satisfied their obligations to  
3 provide the Class Notice to the affected Class Member. The affected Class  
4 Member shall remain a member of the Settlement Class and shall be bound by all  
5 the terms of the Settlement and the Court's Order and Final Judgment.

6 (d) Class Counsel shall provide to the Court a declaration by the Settlement  
7 Administrator of due diligence and confirming mailing of the Notices.

8 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

9 33. As set forth above, each Class Member will have until the expiration of the applicable  
10 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class  
11 Member's Covered Workweek information on the Notice. No disputes will be honored if they are  
12 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.  
13 Each Class Member is responsible to maintain a copy of any documents sent to the Settlement  
14 Administrator and a record of proof of mailing.

15 34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the  
16 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and  
17 PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and  
18 negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will  
19 automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member  
20 within that time, and the Class Member's relevant claims will remain released by the Settlement.  
21 Settlement Payment checks which have expired will not be reissued.

22 35. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void  
23 date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of  
24 each Class Member who failed to cash their Settlement Payment check prior to the void date.

25 36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator  
26 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to  
27 be made to Class Members (to be identified anonymously by employee number or other identifier). A  
28 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and

Defendant's Counsel and filed with the Court by Class Counsel.

**RELEASE BY THE CLASS AND PAGA EMPLOYEES**

37. Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee, regardless of whether they have requested exclusion from the Settlement of Class claims, will release claims as follows:

- (a) **Identity of Released Parties.** The released parties are Defendant and their subsidiaries, affiliates, parents, agents, employees, partners, directors, officer, attorneys, trustees, insurers, representatives, predecessors, successors, and assigns, agents, payroll services, staffing services, and joint employers (collectively "Releasees").
- (b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, **and** Defendant has paid all amounts owing under the Settlement.
- (c) **Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:
  - 1) any and all claims stated in the Action, or that could have been stated based on the facts alleged in the Action, implicitly or explicitly, including but not

1 limited to state wage and hour claims (including all claims under the  
2 California Labor Code) for unpaid wages, minimum wage, overtime, off-  
3 the-clock work, meal periods, rest periods, wage statement violations,  
4 unreimbursed expenses, interest, penalties, and attorneys' fees, waiting  
5 time penalties, withholding from wages and the related provisions of the  
6 Labor Code including but limited to Labor Code §§ 201-204, 210, 216,  
7 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1198, 2802,  
8 derivative claims under California Business & Professions Code §§ 17200  
9 et seq., and all claims under the governing Wage Orders ("Released  
10 Claims");

11 2) as to any Class Member who cashes their Settlement Payment, the signing  
12 and negotiation of that check shall serve as the Class Member's consent to  
13 join the action for purposes of releasing claims arising under the Fair Labor  
14 Standards Act that are related to the claims stated in the Action, implicitly  
15 or explicitly; and,

16 (d) **Claims Released by PAGA Employees.** All PAGA Employees employed during  
17 the Released PAGA Claims Period (whether requesting exclusion from the  
18 Settlement or not) will release the Released PAGA Claims (*see* Paragraph 15,  
19 above).

20 **EMPLOYMENT BY DEFENDANT NOT CONSIDERATION FOR THIS SETTLEMENT**  
21 **OR A CONDITION OF THIS SETTLEMENT**

22 38. Employment of Plaintiffs by Defendant is not consideration for, or a condition of, this  
23 Settlement.

24 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

25 39. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in  
26 support of Plaintiffs' unopposed motion for preliminary approval for determination by the Court as to its  
27 fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action  
28 Settlement, the Parties shall apply to the Court for the entry of an order:

- 1 (a) Scheduling a final approval and fairness hearing on the question of whether the  
2 proposed Settlement, including payment of attorney's fees and costs, and the Class  
3 Representatives' service payment, should be finally approved as fair, reasonable,  
4 and adequate as to the members of the Class;
- 5 (b) Certifying a Class;
- 6 (c) Approving as to form and content the proposed Notice;
- 7 (d) Directing the mailing of the Notice;
- 8 (e) Preliminarily approving the Settlement subject only to the objections of Class  
9 Members and final review by the Court;
- 10 (f) Conditionally appointing Plaintiffs and Class Counsel as representatives of the  
11 proposed Class Members; and,
- 12 (g) Appointing Phoenix Settlement Administrators as the Settlement Administrator,  
13 and order the Settlement Administrator to issue Notices as outlined above.

14 **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

15 40. In conjunction with the hearing of a motion for final approval by the Court of the  
16 Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's  
17 Counsel for review and approval and then submit to the Court a proposed final order and judgment  
18 containing provisions sufficient to accomplish the following:

- 19 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and  
20 adequate, and directing consummation of its terms and provisions;
- 21 (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- 22 (c) Approving the Settlement Administration Costs;
- 23 (d) Approving the Service Payment to the Class Representatives;
- 24 (e) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting  
25 duties under the Settlement.
- 26 (f) Adjudging Plaintiffs and Class Counsel may adequately represent the Final  
27 Settlement Class for the purpose of entering into and implementing the Agreement;
- 28 (g) Entering a final judgment in the action;

- 1 (h) Adjudging that notwithstanding the submission of a timely request for exclusion,  
2 Class Members are still bound by the settlement and release of the Released PAGA  
3 Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46  
4 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to  
5 the Released PAGA Claims, and further affirms that the State's claims for civil  
6 penalties pursuant to PAGA are also extinguished;
- 7 (i) Directing the posting of the final judgment on a website maintained by the  
8 Settlement Administrator for a period of not less than 90 calendar days after entry  
9 of final judgment.

10 Any revised final judgments will also be provided to Defendant's Counsel for review and approval before  
11 they are submitted to the Court.

12 **NULLIFICATION AND TERMINATION**

13 41. This Settlement will be null and void if any of the following occur: (a) the Court should for  
14 any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to  
15 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than  
16 adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for  
17 any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or  
18 rendered void; or (e) the Settlement does not become final for any other reason.

19 42. If 10% or more of the Class Members opt out of this Settlement, then Defendant in its sole  
20 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide  
21 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no  
22 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's  
23 Counsel must give Plaintiffs' Counsel written notice, by facsimile, e-mail, or mail, no later than 10 court  
24 days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be solely  
25 responsible for the costs incurred by the Settlement Administrator for the settlement administration.

26 43. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement  
27 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or  
28 proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all

Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

#### **PARTIES' AUTHORITY**

44. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

#### **MUTUAL FULL COOPERATION**

45. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement.

#### **NO PRIOR ASSIGNMENTS**

46. The Parties and their respective counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

#### **NO ADMISSION OF LIABILITY**

47. Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all the claims and contentions alleged by the Plaintiffs in this case. The Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

#### **ENFORCEMENT ACTIONS**

48. If the Parties have a dispute with regard to the language of this Agreement, they agree to first attempt to resolve the dispute informally through good faith negotiations, but if those efforts are

1 unsuccessful, they agree to mediate any such dispute before taking legal actions. The Parties will split the  
2 costs of the mediator, and all parties will bear their own fees and costs. In the event that one or more of the  
3 Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to  
4 enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the  
5 successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable  
6 attorney's fees and costs, including expert witness fees incurred in connection with any enforcement  
7 actions.

### 8 NOTICES

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

#### 13 Class Counsel:

14 Kane Moon  
15 H. Scott Leviant  
16 Mariam Ghazaryan  
17 **MOON & YANG, APC**  
18 1055 W. Seventh St., Suite 1880  
19 Los Angeles, California 90017  
20 Telephone: (213) 232-3128  
21 Facsimile: (213) 232-3125  
22 kane.moon@moonyanglaw.com  
23 scott.leviant@moonyanglaw.com  
24 mariam.ghazaryan@moonyanglaw.com

#### 20 **MELMED LAW GROUP P.C.**

21 Jonathan Melmed  
22 1801 Century Park East, Suite 850  
23 Los Angeles, California 90067  
24 Telephone: (310) 824-3828  
25 jm@melmedlaw.com

#### Counsel for Defendant:

**CDF LABOR LAW LLP**  
John R. Giovannone  
Linda Wang  
707 Wilshire Boulevard, Suite 5150  
Los Angeles, CA 90017  
Telephone: (213) 612-6300  
jgiovannone@cdfllaborlaw.com  
lwang@cdfllaborlaw.com

### 24 CONSTRUCTION

25 50. The Parties hereto agree that the terms and conditions of this Settlement are the result of  
26 lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed  
27 in favor of or against any party by reason of the extent to which any party or his, her or its counsel  
28 participated in the drafting of this Settlement.

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

52. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

53. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

54. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the Gross Settlement Amount as attorney's fees.

55. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

56. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement. The Notice will advise all Class Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

57. This Settlement may be executed in counterparts and by electronic or facsimile signatures,

1 and when each party has signed and delivered at least one such counterpart, each counterpart shall be  
2 deemed an original, and, when taken together with other signed counterparts, shall constitute one  
3 Settlement, which shall be binding upon and effective as to all Parties.

#### 4 **CONFIDENTIALITY & PUBLIC COMMENT**

5 58. The Class Representative and Class Counsel agree they will not make any disparaging  
6 comments about Defendant relating to this Settlement of this class action or disclose the negotiations of  
7 the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record  
8 other than to Class Members, who may receive information about the Settlement that is not in the public  
9 record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as  
10 expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of  
11 the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no  
12 comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. To  
13 the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a  
14 statement that a matter was settled between a putative class and “a commercial janitorial and facility  
15 maintenance business.” Any communication about the Settlement to Class Members prior to the Court-  
16 approved mailing will be limited to (1) a statement that a settlement has been reached, (2) a statement of  
17 any of the details that would necessarily be included in any Court-approved Notice if a Class Member  
18 requests details about the proposed Settlement, and (3) a warning that the terms of the proposed Settlement  
19 have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is  
20 prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse,  
21 (2) accountants or lawyers as necessary for tax purposes, or (3) Class Members. At all times, the Class  
22 Representative is prohibited from communicating about the terms or the fact of the settlement on any form  
23 of social media (“Social Media Bar”). If the Social Media Bar is breached by the Class Representative,  
24 Defendant shall recover the Service Payment from the Class Representative. Class Counsel will take all  
25 steps necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against  
26 any public disclosure of the Settlement. Class Counsel will not include or use the settlement for any  
27 marketing or promotional purposes other than as expressly allowed above. Class Counsel agree that they  
28 will destroy all confidential documents and information provided to them by Defendant from their email

accounts within 60 calendar days after the completion of the administration of the Settlement. Class Counsel further agrees that none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution of this Action or the defense or prosecution of a malpractice action. This paragraph shall not operate to restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

### **FINAL JUDGMENT**

59. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiffs and Defendant as set forth below:

IT IS SO STIPULATED.

#### **Plaintiffs & Class Representative:**

Dated: November 17, 2022

By: \_\_\_\_\_

RUTH RAMIREZ

DocuSigned by:  
  
E365EE5956CB4D9...

Dated: November \_\_, 2022

By: \_\_\_\_\_

JORGE RUIZ QUEZADA

#### **Plaintiffs' Counsel:**

Dated: November 17, 2022

MOON & YANG, APC

By: \_\_\_\_\_

Kane Moon  
H. Scott Leviant  
Mariam Ghazaryan

Attorneys for Plaintiff RUTH RAMIREZ

Dated: November \_\_, 2022

MELMED LAW GROUP, P.C.

By: \_\_\_\_\_

Jonathan Melmed

Attorneys for Plaintiff JORGE RUIZ  
QUEZADA

accounts within 60 calendar days after the completion of the administration of the Settlement. Class Counsel further agrees that none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution of this Action or the defense or prosecution of a malpractice action. This paragraph shall not operate to restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

### **FINAL JUDGMENT**

59. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiffs and Defendant as set forth below:

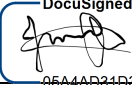
IT IS SO STIPULATED.

#### **Plaintiffs & Class Representative:**

Dated: November \_\_, 2022

By: \_\_\_\_\_  
RUTH RAMIREZ

Dated: November <sup>17</sup> \_\_, 2022

By:  \_\_\_\_\_  
JORGE RUIZ QUEZADA

#### **Plaintiffs' Counsel:**

Dated: November \_\_, 2022

MOON & YANG, APC

By: \_\_\_\_\_  
Kane Moon  
H. Scott Leviant  
Mariam Ghazaryan

Attorneys for Plaintiff RUTH RAMIREZ

Dated: November 17, 2022

MELMED LAW GROUP, P.C.

By:  \_\_\_\_\_  
Jonathan Melmed

Attorneys for Plaintiff JORGE RUIZ  
QUEZADA

1 **Defendant:**

2 Dated: November 11, 2022

C&W FACILITY SERVICES, INC.

3 By: Tom Harris  
4 Print Name

5 Tom Harris  
6 Signature

7 Assistant General Counsel  
8 Title

9  
10 **Defendant's Counsel:**

11 Dated: November 11, 2022

CDF LABOR LAW LLP

12 By:   
13 John R. Giovannone  
14 Linda Wang

15 Attorneys for Defendant C&W FACILITY  
16 SERVICES, INC.

# **Exhibit “A”**

## **NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT**

*Ruth Ramirez v. C&W Facility Services, Inc.*, Case No.: 2:20-CV-11319-JVS (PVCx)  
*Jorge Ruiz Quezada v. C&W Facility Services, Inc.*, Case No.: 2:21-CV-03458-JVS (PVCx)

*A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.*

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF C&W FACILITY SERVICES, INC. (“DEFENDANT”) WHO WORKED FOR DEFENDANT IN CALIFORNIA AT ANY TIME BETWEEN NOVEMBER 3, 2016 AND [END DATE] (THE “CLASS PERIOD”), AND YOU DID NOT WORK AT AMAZON.COM, INC. LOCATIONS AND WERE NOT UNIONIZED, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

### **Why should you read this Notice?**

A proposed settlement (the “Settlement”) has been reached in the consolidated class and representative action lawsuits entitled *Ruth Ramirez v. C&W Facility Services, Inc.*, U.S. District Court Case No. 2:20-CV-11319-JVS (PVCx) and *Jorge Ruiz Quezada v. C&W Facility Services, Inc.*, U.S. District Court Case No. 2:21-CV-03458-JVS (PVCx) (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Class Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

**YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT:** Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Christina A. Snyder on <<FA DATE>>, at <<FA TIME>>, in Courtroom 8D of the United States Courthouse, 350 W. First Street, 8th Floor, Los Angeles, CA 90012, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DO NOTHING – GET MONEY</b>                                                                                | If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.                                                                                                                                       |
| <b>EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: &lt;&lt;RESPONSE DEADLINE&gt;&gt;</b> | You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written request to be excluded (“Opt-Out Request”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Opt-Out Requests must be submitted by <<RESPONSE DEADLINE>>.                              |
| <b>OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: &lt;&lt;RESPONSE DEADLINE&gt;&gt;</b>    | To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit an Opt-Out Request if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>. |

### ***Who is affected by this proposed Settlement?***

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked for Defendant in California during the Class Period, excluding non-exempt employees who worked at Amazon.com, Inc. (“Amazon”) locations and non-exempt employees who were unionized. The “Class Period” is November 3, 2016 through [END DATE].

According to Defendant’s records, you are a member of the settlement class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$50,000 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] a PAGA Employee who worked in the State of California at any time during the PAGA Period of November 20, 2019 through October 3, 2022.

### ***What is this case about?***

In the Action, Plaintiffs Ruth Ramirez and Jorge Ruiz Quezada (“Plaintiffs”) allege on behalf of themselves and the Class that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages at termination; (6) failed to furnish accurate itemized wage statements; (7) failed to reimburse necessary business expenses; (8) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (9) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiffs seek unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

**Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiffs’ claims do not meet the requirements for class certification.**

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiffs and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiffs also believe this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

### ***Who are the attorneys representing the Parties?***

The attorneys representing the Parties in the Action are:

#### **Class Counsel**

Kane Moon  
H. Scott Leviant  
Mariam Ghazaryan  
MOON & YANG, APC  
1055 W. Seventh St., Suite 1880  
Los Angeles, California 90017  
Telephone: (213) 232-3128  
Facsimile: (213) 232-3125  
scott.leviant@moonyanglaw.com  
mariam.ghazaryan@moonyanglaw.com

MELMED LAW GROUP P.C.  
Jonathan Melmed  
1801 Century Park East, Suite 850  
Los Angeles, California 90067  
Telephone: (310) 824-3828  
jm@melmedlaw.com

#### **Defendant’s Counsel**

CDF LABOR LAW LLP  
John R. Giovannone  
Linda Wang  
707 Wilshire Boulevard, Suite 5150  
Los Angeles, CA 90017  
Telephone: (213) 612-6300  
jgiovannone@cdflaborlaw.com  
lwang@cdflaborlaw.com

### ***What are the Settlement terms?***

Subject to final Court approval, Defendant will pay \$2,500,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Enhancements to Plaintiffs (up to \$7,500 to each Plaintiff, for a maximum of \$15,000); (c) the Court-approved

attorneys' fees and costs to Class Counsel ("Class Counsel's Fees and Expenses") (\$833,333.33 in fees and up to \$30,000 in costs to be requested); (d) \$200,000 in civil penalties pursuant to the PAGA (the "PAGA Allocation"); and (e) payment to the Settlement Administrator for settlement administration services ("Administrative Expenses") (estimated to be \$16,000.)

**Individual Settlement Payments.** Class Members who do not timely and properly request to be excluded from the Settlement (the "Settlement Class Members") will receive a share of the Net Settlement Amount (the "Settlement Class Payment"), and Class Members who are also PAGA Employees will receive a share of the \$50,000 from the PAGA Settlement allocated to PAGA Employees (the "PAGA Settlement Payment"), regardless of whether they request exclusion from the Settlement (the total payment to a Class Member is their "Individual Settlement Payment").

The "Net Settlement Amount" will be calculated by deducting from the Gross Settlement Amount the Class Counsel's Fees and Expenses, the Class Representative Enhancements, the PAGA Penalty Payment, and the Administrative Expenses. The Individual Settlement Payments will be comprised of the Settlement Class Payments to each eligible Settlement Class Member and the PAGA Settlement Payment to each eligible PAGA Employee.

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$50,000 set aside for all PAGA Settlement Payment) × [the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members].

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$50,000 × [the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period)].

Your estimated Individual Settlement Payment is <<Estimated Settlement Payment>> and the number of work weeks you worked during the Class Period based on your hire and/or termination dates is <<Work Weeks>>. You may seek to dispute the number of your work weeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<RESPONSE DEADLINE>> (the "Response Deadline") at:

Phoenix Settlement Administrators

[Phoenix Address]

You must produce documentary evidence supporting your contention. Defendant's records will be presumed correct unless you prove otherwise by credible evidence. If you dispute the accuracy of Defendant's records used to calculate work weeks, and the counsel both parties and the Settlement Administrator cannot resolve the dispute informally, the matter will be referred to the court for final resolution. The Court will resolve and decide all work week disputes, and its decisions will be final and non-appealable. **REMINDER:** If you believe your estimated Individual Settlement Payment is incorrect because your work weeks (the number of weeks you worked within the Class Period) are wrong, your deadline to dispute this is <<RESPONSE DEADLINE>>.

For tax reporting purposes, the Settlement Class Payments to Class Members will be allocated as 33 1/3% to wages, 33 1/3% to penalties and 33 1/3% to interest. The PAGA Settlement Payments will be allocated 100% as penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

By cashing or depositing the check for your Individual Settlement Payment, you will also opt in to a settlement of claims for unpaid compensation under the Fair Labor Standards Act ("FLSA").

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the check's issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller's Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

Within 28 calendar days of the Effective Date (and assuming that Defendant has paid all amounts owed under the Settlement), the Settlement Administrator will distribute the Individual Settlement Payments to all Settlement Class Members and PAGA Employees. The "Effective Date" is when: (1) the Court has held a final approval hearing and entered a final order and judgment certifying the Class and approving this Settlement; and (2) the later of the following events: (a) seven calendar days have passed since final approval is granted if there are no objections to the settlement; (b) 35 days following notice of entry of the Court's final order approving the Settlement if there are any objections by any Class Member; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed within 30 days following notice of entry of the Court's final order approving the Settlement, then 21 days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

Payments to Settlement Class Members and PAGA Employees will issue only AFTER the payment by Defendant of the Gross Settlement Amount to the Settlement Administrator. **PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.**

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

**Class Counsel's Fees and Expenses, the Class Representative Enhancement, Administrative Expenses, the PAGA Penalty Payment.** Class Counsel will ask the Court to award attorneys' fees up to \$833,333.33 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$30,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Enhancements made to Plaintiffs, not to exceed \$7,500 each (for a total of \$15,000), for his efforts in bringing the Action on behalf of the Class. The Parties estimate the cost of administering the Settlement will not be less than \$40,000 (and is currently estimated to be \$16,000). The PAGA Penalty Payment in the amount of \$150,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$200,000 PAGA Allocation.

#### ***What claims are being released by the proposed Settlement?***

Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

- (a) Identity of Released Parties. The released parties are Defendant and their subsidiaries, affiliates, parents, agents, employees, partners, directors, officer, attorneys, trustees, insurers, representatives, predecessors, successors, and assigns, agents, payroll services, staffing services, and joint employers (collectively "Releasees").
- (b) Date Release Becomes Active. The Released Claims and Released PAGA Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.
- (c) Claims Released by Settlement Class Members. Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion

(which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) any and all claims stated in the Action, or that could have been stated based on the facts alleged in the Action, implicitly or explicitly, including but not limited to state wage and hour claims (including all claims under the California Labor Code) for unpaid wages, minimum wage, overtime, off-the-clock work, meal periods, rest periods, wage statement violations, unreimbursed expenses, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1198, 2802, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Orders ("Released Claims");

2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member's consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly; and,

(d) **Claims Released by PAGA Employees.** All PAGA Employees employed during the Released PAGA Claims Period (whether requesting exclusion from the Settlement or not) will release the Released PAGA Claims ("Released PAGA Claims" are all claims that have been pled or could have been pled, based upon the factual allegations and issues set forth in the Notices to the LWDA and alleged in the Complaint, including civil penalties under PAGA, fees, and all other claims and allegations made or which could have been made in the Action based on the facts and allegations pled in Plaintiffs' Notices to the LWDA and the Complaint.).

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member and PAGA Employee, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly file an Opt-Out Request. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

#### ***What are my options in this matter?***

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

**OPTION A. Remain in the Class.** If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

**Objecting to the Settlement:** If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can't object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections should be sent to the Settlement Administrator at Phoenix Settlement Administrators [Phoenix Address]. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; and (4) be

postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

If you wish to attend the Final Approval Hearing by remote video, visit <http://www.cacd.uscourts.gov/honorable-christina-snyder-0> for instructions on how to appear via Zoom and contact the Courtroom Deputy Clerk to confirm that you have permission to do so. You will need to provide the Case Numbers for this case. The Case Numbers are located at the top of the first page of this Class Notice

**OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment).** You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must submit a written request to be excluded to the Settlement Administrator at Phoenix Settlement Administrators [Phoenix Address]. In order to be valid, your written request to be excluded from the Class Settlement must be signed and include your full name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement), along with a clear statement that you wish to be excluded from the class action portion of the Settlement.

Your written request to be excluded from the Class Settlement must then be signed and postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a written request to be excluded from the Class Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Class Settlement by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money,** as a result of the Action and Settlement, except for any payment you may be receive from the PAGA portion of this Settlement.

#### ***What is the next step in the approval of the Settlement?***

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's Fees and Expenses, the Class Representative Enhancement, the Administrative Expenses, and the PAGA Allocation on <<FINAL APPROVAL HEARING DATE & TIME>>, in Courtroom 8D of the United States Courthouse, 350 W. First Street, 8th Floor, Los Angeles, CA 90012. If you wish to attend the Final Approval Hearing remotely (by video), follow the instructions above. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<website>>.

#### ***How can I get additional information?***

This Class Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class and Representative Action Settlement attached to the Declaration of H. Scott Leviant in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class and Representative Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cacd.uscourts.gov> or at the Clerk's Office of the United States District Court. If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge. Any motion for an award of attorneys' fees filed by Class Counsel will also be available through those methods.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.**

# **Exhibit “B”**

# **MOON & YANG, APC**

ATTORNEYS AT LAW  
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880  
LOS ANGELES, CALIFORNIA 90017  
TELEPHONE: (213) 232-3128  
FACSIMILE: (213) 232-3125

Kane Moon, Esq.  
Kane.moon@moonyanglaw.com

November 2, 2020

## **VIA ONLINE SUBMISSION**

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

## **VIA CERTIFIED MAIL**

C&W Facility Services, Inc.  
140 Kendrick Street, Building C, Suite 201  
Needham, MA 02494

## **Notice of Labor Code Violations and PAGA Penalties**

Re: ***Ruth Ramirez v. C&W Facility Services, Inc.***

To Whom It May Concern:

Please be advised that my office has been retained by Ruth Ramirez (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, C&W Facility Services, Inc. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

**Factual Background Regarding Plaintiff's Employment with Defendant**

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a maintenance worker from approximately September 2019 to June 2020, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

**Failure to Pay for All Hours Worked, Including Overtime**

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate.

### **Failure to Provide Meal Periods**

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

### **Failure to Authorize and Permit Rest Periods**

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

#### **Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and

question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

#### **Failure to Reimburse and Indemnify Expenses**

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Plaintiff and the Aggrieved Employees regularly used their own cellular telephone to communicate with supervisors relating to work, but Defendant did not reimburse them for the use of these personal cellular telephones. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

#### **Failure to Timely Pay All Wages at Termination**

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to

fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

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

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

#### **Failure to Furnish Accurate Itemized Wage Statements**

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

**Action for Civil Penalties Under PAGA**

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.

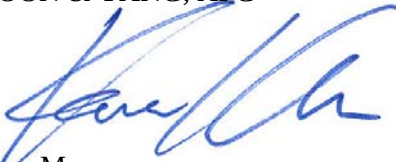
Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon  
*Attorney at Law*

**M**  
**MELMED LAW GROUP**  
— A PROFESSIONAL CORPORATION —

WRITER'S EMAIL ADDRESS  
JM@MELMEDLAW.COM

1801 CENTURY PARK EAST, SUITE 850  
LOS ANGELES, CA 90067

T. (310) 824 - 3828  
F. (310) 862 - 6851

**November 20, 2020**

**VIA CERTIFIED MAIL AND SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE  
ONLINE FORM**

Human Resources  
C&W Facility Services Inc.  
140 Kendrick Street  
Building C, Suite, 201  
Needham, Massachusetts 02494

C&W Facility Services Inc.  
% C T Corporation System  
818 West Seventh Street, Suite 930  
Los Angeles, California 90017

Re: Jorge Ruiz Quezada v. C&W Facility Services Inc., et al.  
*California Labor Code § 2699.3 Notice of Intent to File PAGA Representative Action*

To whom it may concern:

This office represents Jorge Ruiz Quezada ("Plaintiff") and similarly-situated employees in a representative action (the "Action") to be filed against C&W Facility Services Inc. ("Defendant") in a civil action entitled *Jorge Ruiz Quezada v. C&W Facility Services Inc., et al.* to be filed in Santa Clara County Superior Court. A copy of the complaint as currently drafted, and as is intended to be filed in the Action, is enclosed herein as **Exhibit A**. This letter incorporates by reference all facts, law, and allegations of Exhibit A.

This letter serves as notice pursuant to Labor Code section 2699.3, et seq. that we intend to include representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf of "aggrieved employees" defined as: *all individuals who are or were employed in California as non-exempt employees by Defendant, from one year prior to the date of this letter and ongoing* ("Aggrieved Employees").

As set forth in more detail in Exhibit A, Defendant violated its obligations to Plaintiff and Aggrieved Employees under California law by failing to pay applicable minimum wages for all hours worked, failing to pay overtime wages, failing to provide lawful rest periods and pay missed rest period premiums, failing to provide lawful meal periods and pay meal period premiums, failing to maintain accurate employment records, failing to provide all wages in full and on time

November 20, 2020

Page 2

during employment, failing to pay all wages earned and unpaid at separation, failing to provide accurate and complete wage statements, failing to reimburse Plaintiff and the Aggrieved Employees for business expenditures, and failing to issue payment to Plaintiff and the Aggrieved Employees in a lawful form.

Because of these systemic violations, Defendant violated Labor Code sections 201, 202, 203, 204, 210, 212, 225.5, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2084, and California Industrial Welfare Commission Wage Orders 5-2001. (Cal. Code of Regs., tit. 8, § 11050). The enclosed Complaint further details: (1) the alleged violations; (2) the facts and theories supporting these violations; (3) the people and entities, dates, classifications, violations, events, and actions at issue; and (4) the illegal practices instituted by Defendant.

Together with this correspondence, the enclosed complaint provides notice that we intend to proceed with a claim for civil penalties in the Action pursuant to PAGA. (See Lab. Code, §§ 2698–2699.6.) We intend to fully prosecute the representative claims alleged in the complaint, including by obtaining civil penalties under PAGA.

Please do not hesitate to contact me at the information provided above.

Very truly yours,

A handwritten signature in black ink that reads "Jonathan Melmed". The signature is written in a cursive, flowing style.

Jonathan Melmed, Esq.  
of Melmed Law Group P.C.

Enclosure

November 20, 2020  
Page 3

# **EXHIBIT A**

**MELMED LAW GROUP P.C.**  
Jonathan Melmed, CA Bar No. 290218  
jm@melmedlaw.com  
1801 Century Park East, Suite 850  
Los Angeles, California 90067  
Phone: (310) 824-3828  
Fax: (310) 862-6851

*Attorneys for Plaintiff and the Putative Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

JORGE RUIZ QUEZADA, an individual, on  
behalf of himself and on behalf of all others  
similarly situated,

Plaintiff,

v.

C&W FACILITY SERVICES INC., a  
Massachusetts Corporation; and DOES 1 TO  
50, inclusive,

Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Pay Wages Timely during Employment,
6. Failure to Pay All Wages Earned and Unpaid at Separation,
7. Failure to Indemnify All Necessary Business Expenditures,
8. Failure to Furnish Accurate Itemized Wage Statements, and
9. Violations of California's Unfair Competition Law (Bus. & Prof. Code, § 17200, et seq.)

**DEMAND FOR JURY TRIAL**

Plaintiff Jorge Ruiz Quezada (“Plaintiff”), on behalf himself and all other similarly situated-employees within the State of California (hereafter “Class Members,” as defined below), complains and alleges of defendant C&W Facility Services Inc. and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

**I. INTRODUCTION**

1. This is a class action complaint brought pursuant to California Code of Civil Procedure section 382 on behalf all individuals who were employed by Defendants in California during the applicable limitations period, as defined below, to the present (Code Civ. Proc., § 382).

2. Plaintiff brings this action on behalf of himself and all others similarly situated, as a class action, against Defendants for:

- A. Failure to pay all minimum wages,
- B. Failure to pay all overtime wages,
- C. Failure to provide rest periods and pay missed rest period premiums,
- D. Failure to provide meal periods and pay missed meal period premiums,
- E. Failure to pay wages timely during employment,
- F. Failure to pay all wages earned and unpaid at separation,
- G. Failure to indemnify all necessary business expenditures,
- H. Failure to furnish accurate itemized wage statements,
- I. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof. Code, § 17200, et seq.).

3. The “Class Period” is designated as the period from four years prior to the filing of this action through the trial date.

4. Defendants’ violations of California’s wage and hour laws and unfair competition laws as described more fully below have been ongoing throughout the Class Period and are still ongoing.

5. Plaintiff is informed and believes and thereon alleges that the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Orders 5-2001 (the “Applicable Wage Order”) and possibly others that may be applicable (Cal. Code of

1 Regs., tit. 8, § 11050). Plaintiff reserves the right to amend or modify the definition of “Applicable  
2 Wage Order” with greater specificity or add additional IWC Wage Orders if additional applicable  
3 wage orders are discovered during the course of litigation.

4 **II. JURISDICTION & VENUE**

5 6. This Court has subject matter jurisdiction over any and all causes of action asserted  
6 herein pursuant to article VI, section 10, of the California Constitution and Code of Civil Procedure  
7 section 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,  
8 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the  
9 laws of the State of California or is subject to adjudication in the courts of the State of California.

10 7. This court has personal jurisdiction over Defendants because Defendants have  
11 caused injuries in the County of Santa Clara and the State of California through their acts, and by  
12 their violation of the California Labor Code and California state common law. Defendants transact  
13 millions of dollars of business within the State of California. Defendants own, maintain offices,  
14 transact business, have an agent or agents within the County of Santa Clara, and/or otherwise are  
15 found within the County of Santa Clara, and Defendants are within the jurisdiction of this Court  
16 for purposes of service of process.

17 8. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of  
18 the Code of Civil Procedure. Defendants operate within California and do business within Santa  
19 Clara County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all  
20 of Defendants’ employees within Santa Clara County and surrounding counties where they may  
21 remotely operate.

22 9. This matter is not appropriate for removal under the Class Action Fairness Act (28  
23 U.S.C. § 1332) as the amount in controversy for Plaintiff’s, and the Class Members’ claims, in  
24 aggregate, is less than \$5,000,000.00. Additionally, all the allegations herein occurred in the State  
25 of California. As such, if the amount in controversy does exceed \$5,000,000.00 this matter would  
26 still not be appropriate for removal under the “local controversy” exception to the Class Action  
27 Fairness Act (28 U.S.C. § 1332, subd. (d)(4)(A)).  
28

1     **III.     THE PARTIES**

2             **A.     PLAINTIFF**

3             10.     At all relevant times, Plaintiff, who is over the age of 18, was and currently is a  
4     citizen of California residing in the State of California. Defendants employed Plaintiff as a non-  
5     exempt hourly employee in the County of Santa Clara.

6             11.     Plaintiff brings this action on behalf of himself and the following class pursuant to  
7     section 382 of the Code of Civil Procedure as follows: *all individuals who are or were employed*  
8     *as non-exempt employees by Defendants in California from four years prior to the filing of this*  
9     *complaint through the date of trial* (the “Class” or the “Class Members”).

10            12.     The Class Members, at all times pertinent hereto, are or were employees of  
11     Defendants during the Class Period.

12            **B.     DEFENDANTS**

13            13.     Plaintiff is informed and believes and thereon alleges that Defendants were  
14     authorized to and doing business in Santa Clara County and is and/or was the legal employer of  
15     Plaintiff and the other Class Members during the applicable statutory periods. Plaintiff and the  
16     other Class Members were, and are, subject to Defendants’ policies and/or practices complained  
17     of herein and has been deprived of the rights guaranteed to him by California Labor Code sections  
18     201, 202, 203, 204, 210, 212, 225.5, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197,  
19     1197.1, 1198, 1199, 2802, and 2084, amongst others, and California Business and Professions  
20     Code section 17200, et seq. (“UCL”), and the Applicable Wage Order (Cal. Code of Regs., tit. 8,  
21     § 11050).

22            14.     Plaintiff is informed and believes, and based thereon alleges, that during the four  
23     years preceding the filing of this complaint and continuing to the present, Defendants did (and  
24     continue to do) business in the State of California, County of Santa Clara.

25            15.     Plaintiff does not know the true names or capacities, whether individual, partner,  
26     or corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said  
27     Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
28     amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,

1 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,  
2 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,  
3 and proximately caused Plaintiff and the Class to be subject to the unlawful employment practices,  
4 wrongs, injuries and damages complained of herein.

5 16. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned  
6 herein, Defendants were and are the employers of Plaintiff and the other Class Members. At all  
7 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter  
8 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each  
9 of them, were the agents, servants, and employees of each and every one of the other Defendants,  
10 as well as the agents of all Defendants, and at all times herein mentioned were acting within the  
11 course and scope of said agency and employment. Defendants, and each of them, approved of,  
12 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of  
13 herein.

14 17. At all relevant times, Defendants, and each of them, were members of and engaged  
15 in a joint venture, partnership, and common enterprise, and acting within the course and scope of  
16 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff  
17 alleges that all Defendants were joint employers for all purposes of Plaintiff and the other Class  
18 Members.

#### 19 **IV. COMMON FACTS & ALLEGATIONS**

20 18. Plaintiff and the other Class Members (collectively, the “Class Members”) are, and  
21 were at all relevant times, employed by the Defendants within the State of California.

22 19. The Class Members are, and were at all relevant times, non-exempt employees for  
23 the purposes of overtime, rest breaks, meal periods, and the other claims alleged in this complaint.

24 20. Specifically, Plaintiff was employed by Defendants within the statutory Class  
25 Period, working as an hourly, non-exempt janitor for Defendants. Plaintiff’s duties included  
26 general janitorial services for an office building.  
27  
28

1           **A.       MINIMUM WAGE VIOLATIONS**

2           21.     Labor Code section 1197 requires employees to be paid at least the minimum wage  
3 fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly,  
4 Labor Code section 1194 entitles “any employee receiving less than the legal minimum  
5 wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage.”  
6 Likewise, the Applicable Wage Order also obligate employers to pay each employee minimum  
7 wages for all hours worked. (Cal. Code of Regs., tit. 8, § 11050, subd. 4).

8           22.     These minimum wage standards apply to each hour that employees work.  
9 Therefore, an employer’s failure to pay for any particular time worked by an employee is unlawful,  
10 even if averaging an employee’s total pay over all hours worked, paid or not, results in an average  
11 hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324).

12           23.     At all relevant times herein, Defendants failed to conform their pay practices to the  
13 requirements of the law. The Class Members were not compensated for all hours worked  
14 including, but not limited to, all hours they were subject to the control of Defendants and/or  
15 suffered or permitted to work under the California Labor Code and the Applicable Wage Order.  
16 Among other violations, the Class Members worked off-the-clock and did not receive minimum  
17 wage for each hour worked.

18           24.     Labor Code section 1198 makes unlawful the employment of an employee under  
19 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and  
20 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal  
21 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well  
22 as liquidated damages in an amount equal to the wages due and interest thereon.

23           25.     When employees, such as the Class Members, are not paid for all hours worked  
24 under Labor Code section 1194, they are entitled to recover minimum wages for the time which  
25 they received no compensation. (See *Sillah v. Command International Security Services* (N.D.  
26 Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover  
27 liquidated damages under Labor Code section 1194.2 if they also showed they were paid less than  
28 minimum wage]).

1           26. Labor Code section 1197.1, subdivision (a), authorizes employees who are paid less  
2 than the minimum wage fixed by an applicable state or local law, or by an order of the commission  
3 a civil penalty, among other damages, as follows:

4           (1) “For any initial violation that is intentionally committed, one  
5 hundred dollars (\$100) for each underpaid employee for each pay  
6 period for which the employee is underpaid.”

7           (2) “For each subsequent violation for the same specific offense, two  
8 hundred fifty dollars (\$250) for each underpaid employee for each  
9 pay period for which the employee is underpaid regardless of  
10 whether the initial violation is intentionally committed.”

11           27. As set forth above, Defendants failed to compensate the Class Members for all  
12 minimum wages. Accordingly, the Class Members are entitled to recover liquidated damages for  
13 violations of Labor Code section 1197.1.

14           28. Based upon these same factual allegations, the Class Members are likewise entitled  
15 to penalties under Labor Code sections 1199.

16           **B. OVERTIME VIOLATIONS**

17           29. Labor Code section 510 requires an employer to compensate an employee who  
18 works more than eight hours in one workday, forty hours in a workweek, and for the first eight (8)  
19 hours worked on the seventh consecutive day no less than one and one-half times the regular rate  
20 of pay for an employee. (Lab. Code, § 510, subd. (a)). Further, Labor Code section 510 obligates  
21 employers to compensate employees at no less than twice the regular rate of pay when an employee  
22 works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive  
23 day of work. (Lab. Code, § 510, subd. (a)). These rules are also reflected in the Applicable Wage  
24 Order. (Cal. Code of Regs., tit. 8, § 11050, subd. 3).

25           30. In accordance with Labor Code section 1194 and the Applicable Wage Order,  
26 Plaintiff and the Class Members could not then agree and cannot now agree to work for a lesser  
27 wage than the amount proscribed by Labor Code sections 510 and 1194 or the Applicable Wage  
28 Order.

1           31.     Here, Defendants violated their duty to accurately and completely compensate the  
2 Class Members for all overtime worked in excess of eight hours in a workday or 40 hours in a  
3 week. Specifically, Defendants failed to compensate the Class Members at one and one-half times  
4 their regular rate of pay for all hours worked more than eight hours in one workday and forty hours  
5 in a workweek, as required by law. (Lab. Code, § 510, subd. (a); Cal. Code of Regs., tit. 8, §  
6 11050, subd. 3).

7           32.     These actions were and are in clear violation of California’s overtime laws as set  
8 forth in Labor Code sections 510, 1194, and the Applicable Wage Order (Cal. Code of Regs., tit.  
9 8, § 11050, subd. 3). As a result of Defendants’ faulty policies and practices, the Class Members  
10 were not compensated for all hours worked or paid accurate overtime compensation.

11           **C.     REST BREAK VIOLATIONS**

12           33.     Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants  
13 were required to provide the Class Members with compensated, duty-free rest periods of not less  
14 than ten (10) minutes for every major fraction of four hours worked. Under the applicable IWC  
15 Wage Orders, an employer must authorize and permit all employees to take ten (10) minute duty  
16 free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11050,  
17 subd. 12).

18           34.     Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require  
19 an employee to work during a meal or rest or recovery period mandated pursuant to an applicable  
20 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . . .”  
21 (Lab. Code, § 226.7, subd. (b)). Labor Code section 226.7 also provides that employers must pay  
22 their employees one additional hour of pay at the employee’s regular rate for each workday that a  
23 “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c)). Thus, the Wage  
24 Orders set when and for how long the rest period must take place and the Labor Code establishes  
25 that violations of the IWC Wage Order are unlawful and sets forth the premium pay employer  
26 must pay their employees when employers fail to provide rest periods.

27           35.     The California Supreme Court has held that, during required rest periods,  
28 “employers must relieve their employees of all duties and relinquish any control over how

1 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th  
2 257, 260). Relinquishing control over employees during rest periods requires that employees be  
3 “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at  
4 p. 275). The *Brinker* court explained in the context of rest breaks that employer liability attaches  
5 from adopting an unlawful policy:

6 “An employer is required to authorize and permit the amount of rest break time  
7 called for under the wage order for its industry. If it does not—if, for example, it  
8 adopts a uniform policy authorizing and permitting only one rest break for  
9 employees working a seven-hour shift when two are required—it has violated the  
10 wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th  
11 1004, 1033).

12  
13 36. Here, Defendants did not permit the Class Members to take compliant rest breaks,  
14 free from Defendants’ control as required by Labor Code section 226.7, IWC Wage Order 5-2001,  
15 and applicable precedent. (See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269  
16 [concluding that “during rest periods employers must relieve employees of all duties and relinquish  
17 control over how employees spend their time.”]). At all relevant times, the Class Members were  
18 not provided with legally-complaint and timely rest periods of at least ten (10) ten minutes for each  
19 four (4) hour work period, or major fraction thereof, due to Defendants’ unlawful rest period  
20 policies/practices. The Class Members were expected and required to continue working through  
21 rest periods in order to meet the expectations Defendants and finish the workday. As a result, the  
22 Class Members were unable to take compliant rest periods. In addition, Defendants also failed to  
23 maintain any mechanism for the accurate payment of rest period premium payments as required  
24 by Labor Code section 226.7.

25 37. Since Defendants did not offer the Class Members the opportunity to receive a  
26 compliant off-duty rest period, “the court may not conclude employees voluntarily chose to skip  
27 those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 (2015)  
28 [“If an employer fails to provide legally compliant meal or rest breaks, the court may not conclude

1 employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court, supra*,  
2 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required by law but  
3 never authorized; if a break is not authorized, an employee has no opportunity to decline to take  
4 it.”)].

5 38. In addition to failing to authorize and permit compliant rest periods, the Class  
6 Members were not compensated with one hour’s worth of pay at their regular rate of compensation  
7 when they were not provided with a compliant rest period in accordance with Labor Code section  
8 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and IWC Wage  
9 Order 5-2001.

10 39. Based on the foregoing, Plaintiff seeks to recover on behalf of himself and other  
11 non-exempt employees’ rest period premiums and penalties.

#### 12 **D. MEAL BREAK VIOLATIONS**

13 40. Labor Code section 512 and the applicable IWC Wage Orders require employers  
14 to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the  
15 first five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee  
16 for a work period of more than five hours per day without providing the employee with a meal  
17 period of not less than 30 minutes . . . .”]; Cal. Code of Regs., tit. 8, § 11050, subd. 11 [“No  
18 employer shall employ any person for a work period of more than five (5) hours without a meal  
19 period of not less than 30 minutes . . . .”]). Additionally, an employee who works more than ten  
20 (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free  
21 meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work  
22 period of more than 10 hours per day without providing the employee with a second meal period  
23 of not less than 30 minutes . . . .”]).

24 41. “An on-duty meal period is permitted only when the nature of the work prevents an  
25 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal  
26 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932). The written agreement  
27 must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the  
28 California Department of Industrial Relations, Division of Labor Standards Enforcement

1 (“DLSE”) and courts have “found that the nature of the work exception applies: ‘(1) where the  
2 work has some particular external force that requires the employee to be on duty at all times, and  
3 (2) where the employee is the sole employee of a particular employer.’” (*Id.* at p. 945; *Abdullah v.*  
4 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959). “[I]t is the employer’s  
5 obligation to determine whether the nature of the work prevents an employee from being relieved  
6 before requiring an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*,  
7 *supra*, 5 Cal.App.5th at p. 946).

8 42. Here, the Class Members were never asked to sign any agreement agreeing to an  
9 on-duty meal period. Moreover, nothing in the nature of their work involved the kind of “external  
10 force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5  
11 Cal.App.5th at p. 945). Nevertheless, Defendants did not provide compliant off-duty meal periods  
12 within the first five hours of work for the Class Members.

13 43. As with rest breaks, meal breaks must be duty-free (*Brinker Restaurant Corp. v.*  
14 *Superior Court*, *supra*, 53 Cal.4th at p. 1035 [“The IWC’s wage orders have long made a meal  
15 period’s duty-free nature its defining characteristic.”]). Relinquishing control over employees  
16 during meal periods requires that employees be “free to leave the employer’s premises” and be  
17 “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2  
18 Cal.5th at p. 275). Under Labor Code section 512, if an employer maintains a uniform policy that  
19 does not authorize and permit the amount of meal time called for under the law (as specified in the  
20 applicable IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant*  
21 *Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033).

22 44. At all relevant times here, the Class Members were denied legally-complaint and  
23 timely off-duty meal periods of at least thirty (30) minutes due to Defendants’ unlawful meal  
24 period policy/practices. As a result of Defendants’ uniform meal period policies and practices, the  
25 Class Members routinely were not permitted to take complaint first meal periods before the end of  
26 the fifth hour of work, and second meal periods before the end of the tenth hour of work. The  
27 Class Members were also not permitted to take second meal periods for shifts in excess of ten (10)  
28 hours. Defendants thus violated Labor Code section 512 and the applicable IWC Wage Orders by

1 failing to advise, authorize, or permit the Class Members of their right to receive thirty (30) minute,  
2 off-duty meal periods within the first five hours of their shifts.

3 45. Labor Code section 226.7 provides that “[a]n employer shall not require an  
4 employee to work during a meal or rest or recovery period mandated pursuant to an applicable  
5 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab.  
6 Code, § 226.7, subd. (b)). Labor Code section 226.7, subdivision (c), and IWC Wage Order 5-  
7 2001 further obligate employers to pay employees one additional hour of pay at the employee’s  
8 regular rate of compensation for each workday that the meal period is not provided (Lab. Code, §  
9 226.7, subd. (c); Cal. Code of Regs., tit. 8, § 11050, subds. 11(B) [“If an employer fails to provide  
10 an employee a meal period in accordance with the applicable provisions of this Order, the employer  
11 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each  
12 workday that the meal period is not provided.”]).

13 46. Accordingly, for each day that the Class Members did not receive compliant meal  
14 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code  
15 section 226.7 and IWC Wage Order 5-2001. Defendants, however, failed to pay the Class  
16 Members meal period premiums for each workday that the employees did not receive a compliant  
17 meal period. Thus, Defendants have violated Labor Code section 226.7 and IWC Wage Order 5-  
18 2001.

19 47. Based on the foregoing, Plaintiff seeks to recover on behalf of himself and other  
20 non-exempt employees’ meal period premiums and penalties.

21 **E. UNTIMELY WAGES DURING EMPLOYMENT**

22 48. Labor Code section 204 expressly requires employers who pay employees on a  
23 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days  
24 following the close of the payroll period.” Labor Code section 210, subdivision (a), makes  
25 employers who violate Labor Code section 204 subject to a penalty of:

26 “(1) For any initial violation, one hundred dollars (\$100) for each failure  
27 to pay each employee.  
28

1           “(2) For each subsequent violation, or any willful or intentional  
2           violation, two hundred dollars (\$200) for each failure to pay each  
3           employee, plus 25 percent of the amount unlawfully withheld.”

4           49. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and  
5           entirely independent and apart from, any other penalty provided in this article . . . .” (Lab. Code,  
6           § 210, subd. (a)).

7           50. Due to Defendants’ failure to pay Plaintiff and other Class Members minimum and  
8           overtime wages as described above, along with rest and meal break premiums, Defendants failed  
9           to timely pay employees within seven calendar days following the close of payroll in accordance  
10          with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden State FC,*  
11          *LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. \*3–5, 2016 U.S.  
12          Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under  
13          Labor Code sections 203 and 204]).

14           **F.        UNTIMELY WAGES AT SEPARATION**

15          51. Labor Code section 203 provides “if an employer willfully fails to pay . . . any  
16          wages of an employee who is discharged or who quits, the wages of the employee shall continue  
17          as a penalty . . .” for up to 30 days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th  
18          487, 492). As a result of Defendants’ failure to pay the Class Members for all minimum and  
19          overtime hours worked as described above, along with meal and rest period premiums, Defendants  
20          violated and continue to violate Labor Code section 203.

21          52. Due to Defendants’ faulty pay policies, those former Class Members whose  
22          employment with Defendants concluded were not compensated for each and every hour worked  
23          at the appropriate rate. Defendants have failed to pay former Class Members whose sums were  
24          certain at the time of termination within seventy-two (72) hours of their resignation and have failed  
25          to pay those sums for thirty (30) days thereafter.

26           **G.        FAILURE TO REIMBURSE BUSINESS EXPENSES**

27          53. At all relevant times herein, Defendants were subject to Labor Code section 2802,  
28          which states that “an employer shall indemnify his or her employees for all necessary expenditures

1 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or  
2 of his or her obedience to the directions of the employer.” The purpose of this section is to “prevent  
3 employers from passing along their operating expenses onto their employees.” (*Gattuso v. Harte-*  
4 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562).

5 54. At all relevant times herein, Defendants were subject to Labor Code section 2804,  
6 which states that “any contract or agreement, express or implied, made by any employee to waive  
7 the benefits of this article or any part thereof, is null and void, and this article shall not deprive any  
8 employee or his personal representative of any right or remedy to which he is entitled under the  
9 laws of this State.”

10 55. Thus, the Class Members were and are entitled to reimbursement for the expenses  
11 they incurred during the course of their duties. The duty to reimburse even extends to the use of  
12 equipment the employee may already own and would be required to pay for anyway (*Cochran v.*  
13 *Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this  
14 case is this: Does an employer always have to reimburse an employee for the reasonable expense  
15 of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the  
16 situation in which the employee incurred an extra expense that he or she would not have otherwise  
17 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the  
18 employer would receive a windfall because it would be passing its operating expenses on to the  
19 employee.”]).

20 56. Here, Defendants failed to fully reimburse the Class Members for necessary  
21 expenditures incurred as a direct consequence and requirement of performing their job duties,  
22 including the costs of the use of their personal cell phones for work purposes. Consequently,  
23 Defendants failed to comply with Labor Code section 2802 and Applicable Wage Order.

#### 24 **H. WAGE STATEMENT VIOLATIONS**

25 57. Defendants also failed to provide accurate itemized wage statements in accordance  
26 with Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226,  
27 subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an  
28 itemized wage statement in writing showing:

- (1) The gross wages earned;
- (2) The total hours worked by the employee;
- (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) The net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) The name and address of the legal entity that is the employer; and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

58. Due to Defendants' failure to pay the Class Members minimum and overtime wages for all hours worked (including, but not limited to, donning and doffing and/or pre- and post-shift activities), along with incorrect overtime rates and meal and rest period premiums, the wage statements issued do not indicate the correct amount of gross wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

59. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and intentionally failed to provide the Class Members with accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing the Class Members with wage statements required by California law. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not

1 providing total hours worked to plaintiff or other employees paid on commission” even though it  
2 believed that employees paid solely on commission or commission and salary “are exempt and  
3 therefore we do not record hours on a wage statement.”)].

#### 4 **I. RECORDKEEPING VIOLATIONS**

5 60. Labor Code section 226, subdivision (a), requires employers to keep an accurate  
6 record of, among other things, all hours worked by employees. Labor Code section 226.3 provides,  
7 in pertinent part, as follows:

8 “Any employer who violates subdivision (a) of Section 226 shall be subject to a  
9 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per  
10 violation in an initial citation and one thousand dollars (\$1,000) per employee for  
11 each violation in a subsequent citation, for which the employer fails to provide the  
12 employee a wage deduction statement or fails to keep the records required in  
13 subdivision (a) of Section 226. **The civil penalties provided for in this section**  
14 **are in addition to any other penalty provided by law.”** (Lab. Code, § 226.3,  
15 emphasis added).  
16

17 61. Likewise, Labor Code section 1174, subdivision (d), requires every employer,  
18 including Defendants, to:

19 “Keep, at a central location in the state or at the plants or establishments at which  
20 employees are employed, **payroll records showing the hours worked daily** by  
21 and the wages paid to, and the number of piece-rate units earned by and any  
22 applicable piece rate paid to, employees employed at the respective plants or  
23 establishments. These records shall be kept in accordance with rules established  
24 for this purpose by the commission, but in any case shall be kept on file for not less  
25 than three years. An employer shall not prohibit an employee from maintaining a  
26  
27  
28

1 personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units  
2 earned.” (Lab. Code, § 1174, subd. (d), emphasis added).

3  
4 62. As explained in detail above, Defendants failed to provide Plaintiff and the Class  
5 Members with accurate itemized wage statements. Defendants have thus failed to keep accurate  
6 records of the “total hours worked by the employee[s]” in violation of Labor Code section 226,  
7 subdivision (a), and are therefore subject to the penalties provided by Labor Code section 226.3.  
8 These penalties are “in addition to any other penalty provided by law.” (Lab. Code, § 226.3).

9 63. The failure to accurately track hours worked also resulted in a failure of Defendants  
10 to keep a record of all “payroll records showing the hours worked daily by” Defendants’  
11 employees, including Plaintiff and other Class Members, in violation of Labor Code section 1174,  
12 subdivision (d).

#### 13 **J. UNLAWFUL FORM OF WAGE PAYMENTS**

14 64. California law requires wages to be issued in a form that is “negotiable and payable  
15 in cash, on demand, without discount, at some established place of business in the state.” (Lab.  
16 Code, § 212, subd. (a)(1)). An employer may *not* issue a form of payment that would be discounted  
17 if turned into cash. (Lab. Code, § 212, subd. (a)(1)). Likewise, employers may not offer any scrip,  
18 coupon, or alternative form of payment that is not redeemable in cash. (Labor Code, § 212, subd.  
19 (a)(2)). A violation of Labor Code section 212 constitutes a misdemeanor. (Lab. Code, § 215.)

20 65. The Division of Labor Standards Enforcement (“DLSE”) has explained four basic  
21 criteria that alternative forms of wage payments must meet to comply with the requirements of  
22 Labor Code section 212:

- 23 (1) Use of the card must not be compulsory (employees must be given  
24 the choice to be paid that way after being fully informed of the  
25 service and procedures),
- 26 (2) Employees must have access to the funds at banks or ATMs inside  
27 California and no fee can be charged to the employee for at least one  
28 use of the card each pay period,

- 1                   (3)     Funds must be made available in cash on the designated payday, and  
2                             for at least 30 days thereafter, and  
3                   (4)     Employees must also receive, on their scheduled payday, an  
4                             itemized paystub that complies with Labor Code section 226.  
5                             (DLSE Opinion Letter 2008.07.07 (July 7, 2008)).

6           66.     Labor Code section 225.5 makes employers who violate Labor Code section 212  
7 subject to a penalty of:

- 8                   “(1)   For any initial violation, one hundred dollars (\$100) for each failure  
9                             to pay each employee.  
10                   “(2)   For each subsequent violation, or any willful or intentional  
11                             violation, two hundred dollars (\$200) for each failure to pay each  
12                             employee, plus 25 percent of the amount unlawfully withheld.”

13           67.     Notably, the penalty provided by Labor Code section 225.5 is “[i]n addition to, and  
14 entirely independent and apart from, any other penalty provided in this article . . . .” (Lab. Code,  
15 § 225.5, subd. (a)).

16           68.     Here, Defendants instituted a compulsory wage payment program for the Class  
17 Members, issuing them payroll debit cards in lieu of cash or check. The debit cards Defendants  
18 chose to issue to the Class Members automatically charge a \$2.00 transaction fee for each  
19 transaction made with the debit cards. The involuntary and fee-ridden structure of this payment  
20 program violates the mandates of Labor Code section 212. Moreover, the \$2.00 transaction fees  
21 constitute unlawful deductions from the Class Members’ wages under Labor Code sections 221–  
22 224, which prohibit employers from “utilizing secret deductions or kickbacks to pay employees  
23 less than their stated wages.” (*Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 584; *Phillips v.*  
24 *Gemini Moving Specialists* (1998) 63 Cal.App.4th 563, 572; *Steinhebel v. Los Angeles Times*  
25 *Communications, LLC* (2005) 126 Cal.App.4th 696, 706–707).

26 **V.     CLASS ACTION ALLEGATIONS**

27           69.     As mentioned above, Plaintiff brings this action on behalf of himself and the Class  
28 Members pursuant to section 382 of the Code of Civil Procedure.

1           70.     **Numerosity/Ascertainability:** The members of the Class are so numerous that  
2 joinder of all members would be unfeasible and not practicable. The membership of the Class is  
3 unknown to Plaintiff at this time; however, it is estimated that the Class number greater than one  
4 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection  
5 of Defendants' employment records.

6           71.     **Common Questions of Law and Fact Predominate/Well Defined Community**  
7 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly  
8 situated non-exempt employees, which predominate over questions affecting only individual  
9 members including, without limitation to:

10           A.     Whether Defendants' pay policies/practices resulted in a failure to pay  
11 members of the Class for all hours worked, including all minimum, regular, and overtime  
12 wages;

13           B.     Whether Defendants' rest period policies and practices afforded legally  
14 compliant rest periods or compensation in lieu thereof;

15           C.     Whether Defendants' meal period policies and practices afforded legally  
16 compliant meal periods or compensation in lieu thereof;

17           D.     Whether Defendants timely paid all wages during employment;

18           E.     Whether Defendants timely paid all wages earned and unpaid at separation;

19           F.     Whether Defendants indemnified their employees for all necessary business  
20 expenditures;

21           G.     Whether Defendants furnished legally-compliant wage statements to  
22 members of the Class pursuant to Labor Code section 226; and

23           H.     Whether Defendants' violations of the Labor Code and the Applicable  
24 Wage Order amounted to a violation of California's UCL.

25           72.     **Predominance of Common Questions:** Common questions of law and fact  
26 predominate over questions that affect only individual members of the Class. The common  
27 questions of law set forth above are numerous and substantial and stem from Defendants' uniform  
28 policies and practices applicable to each individual class member, such as Defendants' uniform

1 policy and practice of failing to pay for all hours worked, Defendants' uniform policies and  
2 practices which failed to provide complaint meal and rest periods, and Defendants' failure to  
3 provide accurate itemized wage statements. As such, the common questions predominate over  
4 individual questions concerning each individual class member's showing as to his or her eligibility  
5 for recovery or as to the amount of his or her damages.

6       73.     **Typicality:** The claims of Plaintiff are typical of the claims of the Class because  
7 Plaintiff was employed by Defendants as a non-exempt employee in California during the  
8 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As  
9 alleged herein, Plaintiff, like the members of the Class, was deprived of minimum, regular, and  
10 overtime wages as a result of Defendants' unlawful timekeeping policies and practices, was  
11 deprived of meal and rest periods and premium wages in lieu thereof, was subject to Defendants'  
12 uniform meal and rest period policies and practices, was not provided accurate itemized wage  
13 statements, and was not paid all wages in full and on time.

14       74.     **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps  
15 to represent fairly and adequately the interests of the members of the Class. Moreover, Plaintiff's  
16 attorneys are ready, willing and able to fully and adequately represent the members of the Class  
17 and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state  
18 and federal court in the past and are committed to vigorously prosecuting this action on behalf of  
19 the members of the Class.

20       75.     **Superiority:** The California Labor Code is broadly remedial in nature and serves  
21 an important public interest in establishing minimum working conditions and standards in  
22 California. These laws and labor standards protect the average working employee from  
23 exploitation by employers who have the responsibility to follow the laws and who may seek to  
24 take advantage of superior economic and bargaining power in setting onerous terms and conditions  
25 of employment. The nature of this action and the format of laws available to Plaintiff and members  
26 of the Class make the class action format a particularly efficient and appropriate procedure to  
27 redress the violations alleged herein. If each employee were required to file an individual lawsuit,  
28 Defendants would necessarily gain an unconscionable advantage since they would be able to

1 exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior  
2 financial and legal resources.

3 76. Moreover, requiring each member of the Class to pursue an individual remedy  
4 would also discourage the assertion of lawful claims by employees who would be disinclined to  
5 file an action against their former or current employer for real and justifiable fear of retaliation and  
6 permanent damages to their careers at subsequent employment. Further, the prosecution of  
7 separate actions by the individual class members, even if possible, would create a substantial risk  
8 of inconsistent or varying verdicts or adjudications with respect to the individual class members  
9 against Defendants herein, and which would establish potentially incompatible standards of  
10 conduct for Defendants or legal determinations with respect to individual class members which  
11 would, as a practical matter, be dispositive of the interest of the other class members not parties to  
12 adjudications or which would substantially impair or impede the ability of the class members to  
13 protect their interests.

14 77. Further, the claims of the individual members of the Class are not sufficiently large  
15 to warrant vigorous individual prosecution considering the concomitant costs and expenses  
16 attending thereto. As such, the Class identified above are maintainable as Class under section 382  
17 of the Code of Civil Procedure.

18 **VI. CAUSES OF ACTION**

19 FIRST CAUSE OF ACTION  
20 *Failure to Pay All Minimum Wages*  
21 *(Against All Defendants)*

22 78. Plaintiff realleges and incorporates by reference all previous paragraphs.

23 79. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the  
24 right of employees to be paid minimum wages for all hours worked, in amounts set by state law  
25 (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, § 11050). Labor Code sections 1194, subdivision  
26 (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal  
27 minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together  
28 with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the  
unpaid wages and interest accrued thereon.

1           80.     At all relevant times herein, Defendants failed to conform their pay practices to the  
2 requirements of the law. Plaintiff and other Class Members were not compensated for all hours  
3 worked including, but not limited to, all hours they were subject to the control of Defendants and/or  
4 suffered or permitted to work under the Labor Code and the Applicable Wage Order.

5           81.     Labor Code section 1198 makes unlawful the employment of an employee under  
6 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and  
7 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal  
8 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well  
9 as liquidated damages in an amount equal to the wages due and interest thereon.

10          82.     As a direct and proximate result of Defendants' unlawful conduct as alleged herein,  
11 Plaintiff and the Class Members have sustained economic damages, including but not limited to  
12 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to  
13 recover economic and statutory damages and penalties and other appropriate relief as a result of  
14 Defendants' violations of the Labor Code and Applicable Wage Order.

15          83.     Defendants' practice and uniform administration of corporate policy regarding  
16 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and  
17 the Class Members in a civil action for the unpaid amount of minimum wages, liquidated damages,  
18 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor  
19 Code sections 204, 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

20                   SECOND CAUSE OF ACTION

21                   *Failure to Pay Overtime Wages*

22                   *(Against All Defendants)*

23          84.     Plaintiff realleges and incorporates by reference all previous paragraphs.

24          85.     This cause of action is brought pursuant to Labor Code sections 204, 510, 1194,  
25 and 1198, which provide that non-exempt employees are entitled to overtime wages for all  
26 overtime hours worked and provide a private right of action for the failure to pay all overtime  
27 compensation for overtime work performed. At all times relevant herein, Defendants were required  
28 to properly pay Plaintiff and other Class Members for all overtime wages earned pursuant to Labor  
Code section 1194 and Applicable Wage Order. Defendants caused Plaintiff and other Class

1 Members to work overtime hours but did not compensate them at one and one-half times their  
2 regular rate of pay for such hours in accordance with California law. Likewise, Defendants caused  
3 Plaintiff and other Class Members to work double-time hours but did not compensate them at twice  
4 their regular rate of pay for such hours in accordance with California law.

5 86. Defendants failed to conform their pay practices to the requirements of California  
6 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay  
7 policies/practices of failing to accurately record all the time that non-exempt employees were  
8 under the supervision and control of Defendants. The foregoing policies and practices are unlawful  
9 and allow Plaintiff and the Class Members to recover in a civil action the unpaid amount of  
10 overtime premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs  
11 of suit according to Labor Code section 204, 510, 1194, and 1198, Applicable Wage Order, and  
12 Code of Civil Procedure section 1021.5.

### 13 THIRD CAUSE OF ACTION

#### 14 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums* 15 *(Against All Defendants)*

16 87. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 88. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establishes  
18 the right of employees to be provided with a rest period of at least ten (10) minutes for each four  
19 (4) hour period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11050).

20 89. Due to Defendants' unlawful rest period policies and practices described in detail  
21 above, Defendants did not authorize and permit Plaintiff and the other Class Members to take all  
22 rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have  
23 not paid an additional hour of pay to Plaintiff and members of the Class at their respective regular  
24 rates of pay for each violation, in accordance with California Labor Code section 226.7.

25 90. The foregoing violations create an entitlement to recovery by Plaintiff and the Class  
26 Members in a civil action for the unpaid amount of rest period premiums owing, including interest  
27 thereon, statutory penalties, and costs of suit pursuant to Applicable Wage Order, and California  
28 Labor Code section 226.7.



1           97. Defendants as a matter of established company policy and procedure in the State of  
2 California, scheduled, required, suffered, and/or permitted Plaintiff and the Class Members, to  
3 work without compensation, work without legally compliant off-duty meal periods and rest  
4 periods, and failed to pay Plaintiff and the Class Members, for their hours worked, meal period  
5 premiums, and rest period premiums within seven days of the close of payroll, as required by law.

6           98. Defendants, as a matter of established company policy and procedure in the State  
7 of California, falsely deny they owe Plaintiff and the other members of the Class these wages, with  
8 the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress,  
9 hinder, delay, and/or defraud Plaintiff and the Class Members.

10          99. Defendants' pattern, practice and uniform administration of its corporate policy of  
11 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff  
12 and the Class Members are entitled to recover, pursuant to Labor Code section 218, the unpaid  
13 balance of the compensation owed to them in a civil action and any applicable penalties owed to  
14 them pursuant to Labor Code section 210.

15                                   SIXTH CAUSE OF ACTION

16                                   *Failure to Timely Pay All Wages Earned and Unpaid at Separation*  
17                                   *(Against All Defendants)*

18          100. Plaintiff realleges and incorporates by reference all previous paragraphs.

19          101. The actionable period for this cause of action is three years prior to the filing of this  
20 complaint through the present, and ongoing until the violations are corrected or the class is certified  
21 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole*  
22 *Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a)). Labor Code  
23 sections 201 and 202 of the California Labor Code require Defendants to pay all compensation  
24 due and owing to the formerly-employed Class Members during the actionable period for this  
cause of action at or around the time that their employment is or was terminated, or ended.

25          102. Section 203 of the Labor Code provides that if an employer willfully fails to pay  
26 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then  
27 the employer is liable for penalties in the form of continued compensation up to thirty (30) work  
28 days.

103. Here, Defendants willfully failed to pay Plaintiff and the formerly-employed Class Members for all hours worked, including minimum and overtime wages and their meal and rest period premiums, prior to or upon termination or separation from employment with Defendants as required by Labor Code sections 201 and 202.

104. As a result, Defendants are liable to Plaintiff and the formerly-employed Class Members for waiting time penalties amounting to thirty (30) days wages for the formerly-employed Class Members pursuant to Labor Code section 203 (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties]).

SEVENTH CAUSE OF ACTION  
*Failure to Indemnify All Necessary Business Expenditures*  
*(Against All Defendants)*

105. Plaintiff realleges and incorporates by reference all previous paragraphs.

106. California Labor Code Section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Likewise, Labor Code section 2804 states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

107. Here, Plaintiff and the other Class Members paid out of pocket for tools to aide them in working, such as their personal cell phones. Defendants did not fully reimburse these necessary business expenses. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such necessary business expenses, plus interest from the date each incurred such business expenses, plus fees and costs (Lab. Code, § 2802, subds. (b), (c)).

EIGHTH CAUSE OF ACTION  
*Failure to Furnish Accurate Itemized Wage Statements*  
*(Against All Defendants)*

108. Plaintiff realleges and incorporates by reference all previous paragraphs.

1           109. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at  
2 the time of each payment to furnish an itemized wage statement in writing showing:

- 3           (1) The gross wages earned;
- 4           (2) The total hours worked by the employee;
- 5           (3) The number of piece-rate units earned and any applicable piece rate  
6 if the employee is paid on a piece rate basis;
- 7           (4) All deductions, provided that all deductions made on written orders  
8 of the employee may be aggregated and shown as one item;
- 9           (5) The net wages earned;
- 10          (6) The inclusive dates of the period for which the employee is paid;
- 11          (7) The name of the employee and only the last four digits of his or her  
12 social security number or an employee identification number other  
13 than a social security number;
- 14          (8) The name and address of the legal entity that is the employer; and
- 15          (9) All applicable hourly rates in effect during the pay period and the  
16 corresponding number of hours worked at each hourly rate by the  
17 employee.

18           110. As set forth above, Defendants issued and continues to issue wage statements to its  
19 non-exempt employees including Plaintiff and the other Class Members that are inadequate under  
20 Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members  
21 for all hours worked, including, but not limited to, all minimum and overtime wages, and missed  
22 meal and rest period premiums, Defendants failed to include required information on Plaintiff and  
23 the other Class Members ' wage statements, including, but not limited to, the gross wages earned,  
24 the net wages earned in violation of Labor Code section 226, subdivision (a).

25           111. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the  
26 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

27           112. As a result of Defendants' issuance of inaccurate itemized wage statements to  
28 Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a),

1 Plaintiff and the Class Members are each entitled to recover an initial penalty of \$50, and  
2 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per  
3 Plaintiff and per each member of the Class from Defendants pursuant to Labor Code section 226,  
4 subdivision (e), along with costs and reasonable attorneys' fees.

5 NINTH CAUSE OF ACTION  
6 *Violations of California's Unfair Competition Law*  
7 *(Against All Defendants)*

8 113. Plaintiff realleges and incorporates by reference all previous paragraphs.

9 114. Defendants have engaged and continue to engage in unfair and/or unlawful business  
10 practices in California in violation of California Business and Professions Code section 17200 et  
11 seq., by failing to pay for all hours worked, including all minimum and overtime wages, by failing  
12 to provide all legally required meal and rest periods or make premium payments in lieu thereof,  
13 by failing to pay them in full and on time during employment, by failing to pay them all wages  
14 due at the time of separation, by failing to compensate them for all necessary business  
15 expenditures, and by failing to provide accurate wage statements to Plaintiff and the other Class  
16 Members .

17 115. Defendants' utilization of these unfair and unlawful business practices deprived and  
18 continue to deprive Plaintiff and the Class Members of compensation to which they are legally  
19 entitled. These practices constitutes unfair and unlawful competition, and provides an unfair  
20 advantage over Defendants' competitors who have been and/or are currently employing workers  
21 and attempting to do so in honest compliance with applicable wage and hour laws.

22 116. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged  
23 herein, Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies,  
24 as necessary and according to proof, to restore any and all monies withheld, acquired and/or  
25 converted by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

26 117. The acts complained of herein occurred within the last four years immediately  
27 preceding the filing of the Complaint in this action.

28 118. Plaintiff was compelled to retain the services of counsel to file this court action to  
protect his interests and those of the Class Members, to obtain restitution and injunctive relief on

1 behalf of Defendants' current non-exempt employees and to enforce important rights affecting the  
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,  
3 which Plaintiff is entitled to recover under Code of Civil Procedure section 1021.5.

4 **VII. PRAYER FOR RELIEF**

5 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is  
6 brought against Defendants, as follows:

- 7 1. For an order certifying the proposed Class;
- 8 2. For an order appointing Plaintiff as representative of the Class;
- 9 3. For an order appointing Plaintiff's counsel as counsel for the Class;
- 10 4. For the First Cause of Action, compensatory, consequential, general and special  
11 damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197;
- 12 5. For the Second Cause of Action, compensatory, consequential, general and special  
13 damages according to proof pursuant to Labor Code sections 204, 510, 1194, and  
14 1198;
- 15 6. For the Third Cause of Action, compensatory, consequential, general and special  
16 damages according to proof pursuant to Labor Code section 226.7;
- 17 7. For the Fourth Cause of Action, compensatory, consequential, general and special  
18 damages according to proof pursuant to Labor Code sections 226.7 and 512;
- 19 8. For the Fifth Cause of Action, the unpaid balance of the compensation owed to  
20 Plaintiff and the other Class Members and any applicable penalties owed to them  
21 pursuant to Labor Code section 210;
- 22 9. For the Sixth Cause of Action, statutory waiting time penalties pursuant to Labor  
23 Code sections 201 through 203, for the Class Members who quit or were fired in  
24 an amount equal to their daily wage multiplied by thirty (30) days, as may be  
25 proven;
- 26 10. For the Seventh Cause of Action, all unreimbursed business expenses, and interest  
27 thereon, that they are owed, pursuant to Labor Code section 2802, and attorney fees,  
28 pursuant to Labor Code section 2802, subdivision (c);

11. For the Eighth Cause of Action, statutory waiting time penalties pursuant to Labor Code sections 201–203, and 226, subdivisions (a) and (e);
12. For the Ninth Cause of Action, restitution to Plaintiff and Class Members of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code sections 17200 et seq.;
13. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
14. On all causes of action, for attorneys’ fees and costs as provided by Labor Code sections 218.5, 226, and Code of Civil Procedure section 1021.5;
15. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and
16. For such other and further relief, the Court may deem just and proper.

Dated: November 20, 2020

**MELMED LAW GROUP P.C.**

Jonathan Melmed

Jonathan Melmed

*Attorney for Plaintiff and the Putative Class*