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individually and on behalf of similarly situated employees  
7

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN JOAQUIN**

10 JOSE MAYORGA, individually and on behalf  
11 of all other similarly situated employees,

12 Plaintiff,

13 vs.

14 BROWN STRAUSS, INC., a Delaware  
15 Corporation; and DOES 1 to 100, inclusive,

16 Defendant.  
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**Case No. STK-CV-UOE-2020-0010906**

**CLASS ACTION**

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

Date: February 8, 2022

Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara Kronlund

Filed: December 28, 2020

FAC Filed: April 5, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on February 8, 2022, at 9:00 a.m., or as soon thereafter as the  
3 matter may be heard in Department 10D of the above-entitled Court, Plaintiff Jose Mayorga,  
4 individually and on behalf of all other similarly situated individuals, hereby move for entry of an Order  
5 for the following:

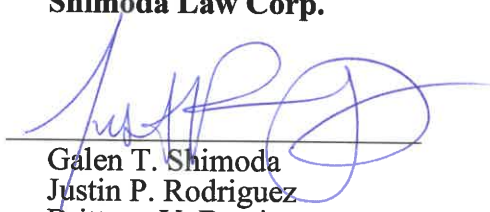
- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff Jose Mayorga as class representative for purposes of settlement;
- 8 3. Appointing the Shimoda Law Corp. as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed class action settlement, in the amount of \$240,000, which is  
10 incorporated herein by reference;
- 11 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of  
12 \$84,000 (35% of the Gross Settlement Amount);
- 13 6. Approving the application for payment to class counsel of reasonable costs in the amount of  
14 \$9,915.33;
- 15 7. Approving the Class Representative Enhancement Payment of \$5,000 to Plaintiff Jose  
16 Mayorga;
- 17 8. Approving the appointment of Simpluris, Inc. as the Claims Administrator and for payment  
18 to Simpluris, Inc. for administering said class action settlement in the amount of \$3,500;
- 19 9. Approving the settlement of claims under the Private Attorneys General Act for the total  
20 amount of \$10,000, 75% of which will be paid to the Labor and Workforce Development  
21 Agency and 25% of which will be paid to Aggrieved Employees;
- 22 10. Determining that the class notification procedure and process complied with class members'  
23 due process rights
- 24 11. Directing that any residue from settlement checks that were not cashed by the check cashing  
25 deadline be donated 50/50 to Capital Pro Bono, Inc. and the Center for Workers' Rights  
26 under the doctrine of *cy pres*;
- 27 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed  
28 herewith and incorporated by reference.

1 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section  
2 2699(1), and California Rule of Court 3.769, on the grounds that the proposed class action and Private  
3 Attorneys General Act settlement is fair, reasonable, and adequate as to all class members and should be  
4 given final approval by the Court. This motion will be based on the notice of motion, memorandum of  
5 points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Norman Alcantara,  
6 exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the  
7 hearing of this motion.

8 **Judges assigned to civil law and motion matters will prepare a tentative ruling for each matter on**  
9 **calendar and a ruling will be available to counsel and litigants on the first court day before the**  
10 **scheduled hearing. If the tentative ruling is satisfactory to counsel, he or she need not appear and**  
11 **the tentative ruling will become final. If counsel or self represented litigants (SRL) wish to appear,**  
12 **he or she may do so only after appropriately notifying the court and other counsel or SRL of that**  
13 **intent. The tentative ruling shall become the ruling of the court unless there is opposition by**  
14 **counsel or SRL. Counsel or self-represented litigants is responsible for reviewing the tentative**  
15 **ruling and notifying the superior court, by calling (209) 992-5714, and all other counsel and self-**  
16 **represented litigants no later than 4:00 p.m. on the day preceding the scheduled hearing of his or**  
17 **her intent to appear to argue. The tentative rulings will be posted to the court's website:**  
18 **www.sjcourts.org. Counsel or self-represented litigants may access the court's website beginning**  
19 **at 1:30 p.m. on the court day immediately preceding the date for which a matter is calendared**

20 Dated: January 6, 2022

Shimoda Law Corp.

By: 

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Justin P. Rodriguez  
Brittany V. Berzin  
Attorneys for Plaintiff

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10 JOSE MAYORGA, individually and on behalf )  
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12 Plaintiff,

13 vs.

14 BROWN STRAUSS, INC., a Delaware  
15 Corporation; and DOES 1 to 100, inclusive,

16 Defendant.  
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21

Case No. STK-CV-UOE-2020-0010906

**CLASS ACTION**

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

Date: February 8, 2022

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## I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

This Motion is brought seeking final approval of a wage and hour class action settlement in the gross amount of \$240,000.00. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release). Plaintiff Jose Mayorga (“Plaintiff”) brought this class action individually and on behalf of other similarly situated employees employed by Defendant Brown Strauss, Inc., (“Defendant”). Plaintiff worked for Defendant in California from about 2006 to September 2020 and was subject to all the same policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint).

Plaintiff has alleged that Defendant failed to pay overtime wages, failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed to pay final wages, engaged in unfair competition, and failed to pay accrued vacation. *See generally* Exhibit B. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the LWDA Regarding PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendant violated California law by failing to incorporate the value of nondiscretionary wages into Plaintiff’s and similarly situated employees’ regular rates of pay for the purpose of calculating overtime, sick time, and other premium pay. *See* Exhibit B. Plaintiff has contended that this is a meritorious class action lawsuit and that this case is appropriate for class certification for settlement purposes as the requisites for class certification in this case can be satisfied. *See* Exhibit B.

Defendants have denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 5. Defendants have denied that this case is appropriate for class certification other than for purposes of settlement and that Plaintiff would have difficulty proving class certification is proper here. *See id.* However, subject to approval by the Court, the parties have been able to compromise and settle all asserted claims for monetary compensation as a result of extensive investigations, informal document and data exchanges, and extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiff’s counsel is convinced that the proposed settlement is in the best interest of the putative class based on the discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See*

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

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

## **II. PROCEDURAL AND LITIGATION HISTORY**

Plaintiff filed a class action complaint on approximately December 28, 2020, in the San Joaquin County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on approximately April 5, 2021, to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

## **III. INVESTIGATION AND DISCOVERY CONDUCTED**

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* Plaintiff worked during the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. The parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See id.* The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages

1 model to assess the reasonableness of any settlement. *See id.*

#### 2 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

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

4 The final settlement occurred only after extended, and sometimes contentious, arm's length  
5 negotiations. Over the course of approximately seven months, Plaintiff has been investigating the  
6 claims and discussing with Defendant's counsel the merits of the claims and certification issues present  
7 in this case. *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and legal  
8 analysis regarding the asserted claims. *See id.* Then, only after nearly seven months of litigation and  
9 negotiation, which included a full day mediation with Hon. Ronald M. Sabraw (Ret.), the parties able to  
10 reach a mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the  
11 parties agreed to a Gross Settlement Amount of \$240,000.00. *See Exhibit A.*

##### 12 **b. The Terms of the Settlement**

13 Under the settlement agreement, Defendants have agreed to the following:

14 1. The following groups of individuals are covered by the Settlement (*See Exhibit A*, ¶¶  
15 1.2, 1.8, 1.9, 1.25):

16  
17 Aggrieved Employees: All non-exempt employees who have or continue  
18 to work for Defendant in California during the PAGA Claim Period (from  
19 December 23, 2019, up to September 10, 2021).

20 Class Members: All non-exempt employees who have or continue to work  
21 for Defendant in California during the Class Period (from December 28,  
22 2016, up to September 10, 2021).

23 2. Pay Gross Settlement Amount of \$240,000.00 to resolve and release the claims alleged  
24 in the Complaint. *See id.* at ¶¶ 5.1, 5.2. No portion of the Gross Settlement Amount will revert to  
25 Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA Payment  
26 regardless of whether they opt out of being Class Members. *See id.* at 7.5.1.

27 3. The parties agree that up to \$5,000 for Plaintiff Jose Mayorga will be paid as a Class  
28 Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be  
entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

//

1           4.       The parties agree that the cost of administering this class action settlement shall be paid  
2 from the settlement proceeds. Subject to Court approval, the parties have selected Simpluris, Inc. to act  
3 as the class action claims administrator, whose costs are \$3,500 for the administration work that has  
4 been performed and will be performed in the future. *See* Declaration of Norman Alcantara (“Decl.  
5 Alcantara”), ¶ 16. The difference between the actual administration costs and the \$5,000 originally  
6 allocated will be paid to Class Members. *See* Exhibit A, ¶ 5.3.

7           5.       The parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to  
8 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to  
9 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶  
10 5.5.

11           6.       The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount  
12 (\$84,000) will be paid for Plaintiff’s attorneys’ fees incurred in the litigation of this case. Defendant  
13 will not oppose any application for attorneys’ fees so long as it is within this threshold. *See id.* at ¶ 5.2.  
14 Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation costs as  
15 approved by the Court which are \$9,915.33. *See id.*; Exhibit D (Plaintiff’s Itemized Costs). The  
16 difference between the actual costs and the originally allocated \$12,500 will be redistributed to Class  
17 Members on a pro rata basis. *See* Exhibit A, ¶ 5.2. The notice sent to class members stated the  
18 maximum cost potential of \$12,500. *See* Decl. Alcantara, Exh. A.

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

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

26           **c. Allocation of Settlement Funds**

27           Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not  
28 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting

1 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any  
2 Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA  
3 Payment. Each Class Member's share will be determined by dividing their total weeks worked within  
4 the Class Period by the total weeks worked by all Class Members within the Class Period. That  
5 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's  
6 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion  
7 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA  
8 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.  
9 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the  
10 Aggrieved Employee's individual share. *See* Exhibit A, at ¶ 5.8.

11 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**  
12 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

13 Plaintiff's motion for preliminary approval of the class action settlement was approved by the  
14 Court, in its entirety, on September 21, 2021. To comply with the class members' due process rights,  
15 the parties enlisted an exhaustive method to ensure the best practical means possible was used to  
16 provide notice to the class. The parties provided the class action administrator the names, last known  
17 address, and social security numbers for the class. The class action administrator then updated this  
18 information by doing an address trace for each individual using this information. *See* Decl. Alcantara,  
19 ¶¶ 6-7. If the Notice Packets were returned as undeliverable, further investigation was performed and  
20 they were re-mailed using updated information. *See id.* at ¶ 9. Of the 67 Notice Packets mailed, only 1  
21 was undeliverable after use of these methods. *See id.* The Notice Packets included information  
22 regarding the requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax  
23 allocations. *See* Decl. Alcantara, Exh. A.

24 The average distribution to participating class members is approximately \$1,825.23, the highest  
25 distribution is approximately \$2,641.23. *See id.* at ¶ 12. No objections to the proposed settlement have  
26 been received and no class members opted out. *See* Decl. Alcantara, ¶¶ 13-14.

27 //

28 //

1 **VI. ARGUMENT**

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

4 A class action may not be dismissed, compromised, or settled without Court approval and the  
5 decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules  
6 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)<sup>1</sup>; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.  
7 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(1)(2) (requiring Court review of PAGA  
8 settlements). However, courts should give "proper deference to the private consensual decision of the  
9 parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated  
10 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment  
11 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating  
12 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."  
13 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms  
14 agreeable to all parties, a court should disapprove of the settlement "only with considerable  
15 circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors  
16 settlement of lawsuits, particularly class actions and other complex cases where substantial resources  
17 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*  
18 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

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

20 The purpose of the Court's final evaluation of a proposed class action settlement is to determine  
21 only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App.  
22 4th at 234-35. If the Court finds a proposed settlement falls within "the range of reasonableness," it  
23 should grant final approval of the class action settlement. *See, e.g., North County Contr. 's Assn., Inc. v.*  
24 *Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994). To make the fairness determination, the  
25 Court must consider several factors, including:

26 the strength of the Plaintiff's case, the risk, expense, complexity and likely  
27 duration of further litigation, the risk of maintaining class action status

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

1 through trial, the amount offered in settlement, the extent of discovery  
2 completed and the stage of the proceedings, the experience and views of  
counsel, the presence of a governmental participant, and the reaction of the  
class members to the proposed settlement.

3 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its  
4 analysis with a presumption that the settlement is fair. “A presumption of fairness exists where: (1) the  
5 settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to  
6 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)  
7 the percentage of objectors is small.” *Id.* at 1802.

8  
9 **i. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length  
Negotiations Between the Parties**

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

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

20 The parties were in possession of all necessary information during the negotiations. The parties  
21 engaged in substantial informal discovery and exchange of documents, including a representative  
22 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the  
23 entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the  
24 class claims and helped thoroughly vet the extent of Plaintiff’s claims against Defendant and create an  
25 accurate damages model. *See id.* at ¶ 6-10. Plaintiff was in possession of this information prior to  
26 calculating the potential damages in this case. *See id.* As a result, Plaintiff was able to make a  
27 reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the settlement now  
28 before the Court was reached at a stage where “the parties certainly have a clear view of the strengths

1 and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp.  
2 610, 617 (N.D. Cal. 1979).

3 **iii. Plaintiff’s Counsel Is Experienced In Similar Litigation and No Class Member**  
4 **Made Objections to the Settlement Or Opted Out**

5 Plaintiff’s counsel has considerable experience in class actions and wage and hour litigation.  
6 Plaintiff’s counsel has brought and is currently bringing several wage and hour class and/or PAGA  
7 actions. Thus, Plaintiff’s counsel is qualified to evaluate the class claims, value of settlement versus  
8 moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl.*  
9 *Rodriguez*, ¶¶ 11-17. Plaintiff’s counsel believes that the settlement is fair and reasonable in light of the  
10 complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to  
11 the class. *See id.* at ¶ 6. This belief is bolstered by the fact that no objections to the settlement have  
12 been made by class members and no class members have opted out. *See Decl. Alcantara*, ¶¶ 13-14.

13 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff’s Case**  
14 **and the Risks and Costs of Further Litigation**

15 A review of the Agreement’s terms does not give rise to any doubts about its fairness. Based on  
16 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 24% and a net  
17 recovery of approximately 12.3% of the claims’ maximum likely value. *See Decl. Rodriguez* at ¶¶ 9-  
18 10. Additionally, on average class members will receive a net award of approximately \$1,825.23 and  
19 the highest recovery is approximately \$2,641.23. *See Decl. Alcantara*, ¶ 12. This settlement is a  
20 reasonable compromise of the class and PAGA claims and is within the percentile ranges of the total  
21 available damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th  
22 at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v.*  
23 *Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*,  
24 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum  
25 potential recovery after reduction for attorney’s fees was higher than median percentage for recoveries  
26 in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale*  
27 *Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net  
28 recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila*

1 v. *Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement  
2 with a gross recovery of 11% of the projected maximum damages available and a net recovery of  
3 approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306  
4 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5%  
5 of the projected maximum recovery).

6 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

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

23 Plaintiff similarly relied upon payroll data and Class Members data to determine the realistic  
24 potential damages suffered by the class as a whole. *See* Decl. Rodriguez, ¶¶ 6-10. This analysis  
25 allowed Plaintiff to determine the extent and frequency of potential violations on all claims as to all  
26 Class Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative  
27 class that is within the range of what has been found to be sufficient in several other cases. *See, supra*,  
28 Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. I-*

1 800 Contacts, Inc., 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7  
2 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of  
3 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and  
4 approximately \$800 per class member). This settlement represents a reasonable compromise given the  
5 percentage of the total demand that was secured, the average recovery per class member, the Court's  
6 ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See Decl.*  
7 Rodriguez, ¶¶ 9-10.

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

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

19 In this case, Plaintiff provided and explained documents, being available at all times to discuss  
20 the case with Plaintiff's counsel. *See Decl. Rodriguez*, ¶ 7. Plaintiff spent a significant amount of time  
21 pursuing this litigation for the benefit of all Class Members. *See id.* Plaintiff brought this action  
22 knowing there would be a delay in any payment as the litigation progressed, rather than proceeding on  
23 individual claims in front of the California Labor Commissioner. *See id.* Payment of 5,000 to Plaintiff  
24 is appropriate given the risk, assistance, time required in bringing this case and resolution of this case.

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

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

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

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

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

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

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

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

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

1 request of 35% falls within these typical fee arrangements. *See* Decl. Rodriguez, ¶ 18. The quality of  
2 counsel and the average size of settlement payments to Class Members and Aggrieved Employees  
3 (\$1,825.23) also support the fee request when compared to other settlements courts have considered as  
4 good results. *See Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at \*48 (E.D. Cal.  
5 2012) ("Class Members will receive an average of approximately \$198.70, with the highest payment to  
6 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is  
7 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees  
8 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the  
9 results achieved in this case were very favorable. Class members are provided with immediate  
10 monetary relief, with an average award of around several hundred dollars and a minimum award of  
11 \$50"). Furthermore, no objections to the settlement have been made by class members and no class  
12 members opted out. *See* Decl. Alcantara, ¶¶ 13-14.

13 **c. Certification of the Class is Appropriate**

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

20 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

21 The proposed settlement class is ascertainable because all putative class members can be readily  
22 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th  
23 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166  
24 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 67 individuals  
25 who fall within the definition of Class Member, which makes joinder of all members impracticable.  
26 *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531  
27 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to  
28

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

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

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

14 The common questions of law and fact in this case stem from Plaintiff's contention that  
15 Defendant violated California law by failing to incorporate the value of nondiscretionary wages into  
16 Plaintiff's and similarly situated employees' regular rates of pay for the purpose of calculating  
17 overtime, sick time, and other premium pay. *See Exhibit B*. The waiting time penalties, unfair  
18 competition, and PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class  
19 Members seek the same remedies under state law. Under these specific circumstances, the  
20 commonality and predominance requirements are satisfied. Regarding the typicality requirement,  
21 Plaintiff contends he suffered from the same unlawful policies, treatment, and circumstances as Class  
22 Members did, will request the same remedies, and will rely on the same methods of proof to establish  
23 liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

24 **iii. The Adequacy Requirement is Met**

25 The adequacy of representation requirement is met if the named representative and counsel have  
26 no interests adverse to those of the putative class members and are committed to vigorously prosecuting  
27

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

1 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60  
2 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the preliminary approved  
3 settlement, Plaintiff and the putative class members will receive a pro rata share of the settlement based  
4 on the number of workweeks they worked for Defendant. *See Exhibit A*. Finally, any settlement class  
5 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number  
6 of workweeks stated in the Notice of Settlement.

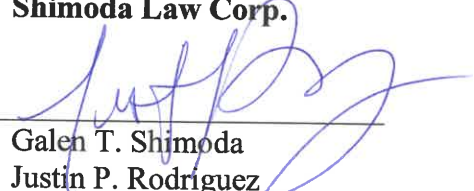
7 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's  
8 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.  
9 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this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

## 15 VII. CONCLUSION

16 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class  
17 for settlement purposes; grant final approval to the proposed settlement, including the Plaintiff's class  
18 representative service award, the payment to the LWDA under PAGA, and class counsel's application  
19 for reasonable attorneys' fees and costs; find that the Notice of Pendency of Class Action and  
20 administration process satisfied class members' due process rights; and approve the proposed order  
21 submitted concurrently herewith.

22  
23 Dated: January 6, 2022

**Shimoda Law Corp.**

24  
25 By: 

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27 Justin P. Rodriguez  
28 Brittany V. Berzin  
Attorneys for Plaintiff

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5

6 Attorneys for Plaintiff JOSE MAYORGA  
individually and on behalf of similarly situated employees  
7

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN JOAQUIN**

10 JOSE MAYORGA, individually and on behalf )  
11 of all other similarly situated employees, )

12 Plaintiff, )

13 vs. )

14 BROWN STRAUSS, INC., a Delaware )  
Corporation; and DOES 1 to 100, inclusive, )  
15 Defendant. )  
16 )  
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**Case No. STK-CV-UOE-2020-0010906**

**CLASS ACTION**

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

Date: February 8, 2022

Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara Kronlund

Filed: December 28, 2020

FAC Filed: April 5, 2021

Trial Date: None Set

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

Dated: January 6, 2022

**Shimoda Law Corp.**

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

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

# **EXHIBIT A**

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19 **SUPERIOR COURT OF CALIFORNIA**  
20 **FOR THE COUNTY OF SAN JOAQUIN**

21 **JOSE MAYORGA**, individually and on behalf  
22 of all other similarly situated employees,

23 Plaintiff,

24 vs.

25 **BROWN STRAUSS, INC.**, a Delaware  
26 Corporation; and DOES 1 to 100, inclusive,  
27 Defendant.

Case No.: STK-CV-UOE-2020-0010906

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

Filed: December 29, 2020  
FAC Filed: April 5, 2021  
Trial Date: None Set

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

This Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement") is made and entered into between the Plaintiff Jose Mayorga ("Plaintiff"), on behalf of himself, the Labor and Workforce Development Agency, and Aggrieved Employees, and Defendant Brown Strauss, Inc. ("Defendant"). This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

**1. DEFINITIONS**

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

1.1 "Action" means the above stated lawsuit, *Mayorga v. Brown Strauss, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2020-0010906, filed December 28, 2020. The First Amended Complaint was filed April 5, 2021.

1.2 "Aggrieved Employee(s)" means all non-exempt employees who have or continue to work for Defendant in California during the PAGA Claim Period.

1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this Joint Stipulation Regarding Class Action and PAGA Settlement and Release.

1.4 "Claim Amount" means an individual Qualified Claimant's and Aggrieved Employee's allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.20, 1.24, 5.5, and 5.8.

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

1.6 "Claims Administrator Costs" means the fees and expenses reasonably incurred by the Claims Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class

Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

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

1.8 "Class Member(s)" means all non-exempt employees who have or continue to work for Defendant in California during the Class Period. The estimated number of Aggrieved Employees is 66.

1.9 "Class Period" means December 28, 2016 up to either (1) the Preliminary Approval Date, or (2) 60 days after this Agreement is fully executed, whichever is earlier.

1.10 "Class Representative" means Plaintiff Jose Mayorga.

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

1.12 "Court" means the San Joaquin County Superior Court.

1.13 "Defendant" means Brown Strauss, Inc.

1.14 "Defendant's Counsel" means Medina McKelvey LLP.

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

1.16 "Effective Date" means either (a) the 60<sup>th</sup> calendar day after a signed order granting final approval of this Agreement has been filed provided no motion to vacate the judgment, appeal, writ or other appellate proceeding having been filed; or (b) the seventh (7<sup>th</sup>) calendar day after any motion to

1 vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally  
2 dismissed with no material change to the terms of this Agreement and there is no right to pursue further  
3 remedies or relief, whichever is later.

4 1.17 "Final Approval Date" means the date a signed order granting final approval of this  
5 Agreement is filed with the Court.

6 1.18 "Gross Settlement Amount" is the sum of Two Hundred Forty Thousand Dollars and No  
7 Cents (\$240,000.00).

8 1.19 "LWDA" means the California Labor and Workforce Development Agency.

9 1.20 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for  
10 distribution to Qualified Claimants, as described in this Agreement, after deduction of Plaintiff's attorneys'  
11 fees and litigation costs, Claims Administrator Costs, the PAGA Payment, employer's taxes, and  
12 Enhancement Payment to the Class Representative.

13 1.21 "Notice of Settlement" means the document substantially in the form attached hereto as  
14 Exhibit 1.

15 1.22 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice  
16 of Settlement to Class Members and Aggrieved Employees.

17 1.23 "PAGA" means Private Attorneys General Act.

18 1.24 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards  
19 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

20 1.25 "PAGA Claim Period" means December 23, 2019 to up to either (1) to the Preliminary  
21 Approval Date or (2) 60 days after this Agreement is fully executed, whichever is earlier.

22 1.26 "Parties" mean Defendant and Plaintiff.

23 1.27 "Preliminary Approval Date" means the date a signed order granting preliminary approval  
24 of this Agreement is filed with the Court.

25 1.28 "QSF" means a Qualified Settlement Fund set up by the Claims Administrator for the  
26 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this  
27 Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain  
28 the property of Defendant until the payments required under the Agreement are made.

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

1.30 "Qualified Claimant's Released Claims" means all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

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

1.32 "Released PAGA Claims" means any and all claims that were brought under the Private Attorneys General Act, Labor Code § 2698 et seq., based on the facts or claims alleged in the Action during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

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

## 2. DESCRIPTION OF THE LITIGATION

2.1 On or about December 23, 2020, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime, failure to provide meal periods, failure to provide rest periods, failure to pay final wages, wage statement violations, failure to maintain accurate records, failure to provide paid sick leave, violation of Labor Code section 558, and failure to pay accrued and unused vacation. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 On or about December 28, 2020, Plaintiff filed a class action Complaint in San Joaquin County Superior Court on behalf of himself and Class Members alleging claims for failure to pay overtime, meal period violations, rest period violations, wage statement violations, waiting time penalties, unfair competition, and failure to pay accrued vacation. Plaintiff filed a First Amended Complaint on approximately April 5, 2021 to add a PAGA cause of action based on the violations alleged in the December 23, 2020 notice to the LWDA on behalf of himself and Aggrieved Employees.

2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, information on Class Members including, but not limited to, Class Members' workweeks, dates of employment, total number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports for a randomly selected sample of Class Members.

2.4 On May 25, 2021, the Parties participated in a lengthy mediation with private mediator Hon. Ronald M. Sabraw (Ret.). At the conclusion of the mediation, the Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

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

2.6 Defendant has denied each of Plaintiff's claims and Defendant has denied that this Action is appropriate for class certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the underlying claims and the class data supporting these claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability based on Defendant's factual and legal contentions and defenses.

2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class

Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

### 3. THE CONDITIONAL NATURE OF THIS AGREEMENT

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

3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

### 4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under

the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

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

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

4.4 If Defendants do agree that the person listed in a data request is a Class Member and/or Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person who submitted the data request, at the address designated for that purpose in the data request. All provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements sent in response to data requests, and any person who submits a data request and is sent a Notice of Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved Employee for all other purposes.

4.5 If Defendants do disagree that the person listed in a data request is a Class Member and/or Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records shall control unless the individual submitting the data request provides

persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Claims Administrator. The decision by the Claims Administrator shall be final and there shall be no right of appeal.

**5. TERMS OF THE SETTLEMENT**

The Parties agree as follows:

**5.1 Gross Settlement Amount:** In consideration and exchange for the releases described in Section 6, Defendant shall pay the Gross Settlement Amount (\$240,000.00). Funding of the Gross Settlement Amount shall occur within twenty-one (21) days after the Final Approval Date to be held in trust in a QSF by the Claims Administrator until the Effective Date. The Gross Settlement Amount includes payments to Qualified Claimants, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, any monies necessary to satisfy Defendant's tax obligations (e.g. employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Qualified Claimants, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment.

**5.2 Attorneys' Fees and Costs:** Class Counsel will apply to the Court for attorney's fees of 35% or \$84,000.00 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the \$84,000.00 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$12,500.00, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$12,500.00 threshold. The Claims Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the

requested amounts not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed \$5,000.00. The difference between any actual costs and the allocated \$5,000.00 shall be added to the Net Settlement Amount.

5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for an Enhancement Payment to the Class Representative in an amount not to exceed Five Thousand Dollars and No Cents (\$5,000.00) to compensate for the risks, time, and expense of his involvement in the Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Claim Amount Plaintiff would otherwise be due under the Agreement as a Qualified Claimant. Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099. In the event that the Court awards less than the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the Class Representative shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

5.5 PAGA Payment: Ten Thousand Dollars and No Cents (\$10,000.00) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

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

1           5.7   No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants  
2 and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were  
3 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not  
4 entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits  
5 under any company bonus or other compensation or benefit plan or agreement in place during the period  
6 covered by the Agreement, nor will it entitle any Qualified Claimant Aggrieved Employee to any increased  
7 retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is  
8 the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments  
9 to be made by Defendant to the Qualified Claimants and Aggrieved Employees in connection with this  
10 Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan  
11 document that might have been in effect during the period covered by this Agreement).

12           5.8   Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved  
13 Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement  
14 Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved  
15 attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims  
16 Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing  
17 their total weeks worked within the Class Period by the total weeks worked by all Class Members within  
18 the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class  
19 Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25%  
20 portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA  
21 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.  
22 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved  
23 Employee's individual share. Where a Qualified Claimant is receiving payment for both the PAGA Claim  
24 Period and the Class Period, they will receive only one check with the payments for each combined into  
25 a single payment.

26           5.9   Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified  
27 Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages.  
28 The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to

1 Qualified Claimants as wages as well as calculating all required withholdings and deductions from said  
2 wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved  
3 Employees are as follows:

4 5.9.1 One third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for  
5 payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall  
6 receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

7 5.9.2 Two thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated for  
8 disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of  
9 the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive  
10 an IRS Form 1099-MISC.

11 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the  
12 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted  
13 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the  
14 Aggrieved Employees shall receive an IRS Form 1099-MISC.

15 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting  
16 and payment of their share of any federal, state and/or municipal income or other taxes on payments made  
17 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and  
18 harmless from any claims resulting from treatment of such payments as non-taxable, including the  
19 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.  
20 No party has made any representation to any of the other Parties as to the taxability of any payments  
21 pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved  
22 Employees, the payments to Class Counsel, the payments to the Class Representative, the payroll tax  
23 liability of Defendant, or the allocation of the Net Settlement Amount or PAGA Payment to wage and  
24 non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this  
25 Agreement.

26 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this  
27 Agreement is limited to the Gross Settlement Amount. All costs and expenses arising out of or in  
28 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount,

1 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and  
2 void as described in Section 3 because the Court, in its independent determination, finds that the  
3 Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be  
4 equally responsible for the costs of the Claims Administrator incurred between the date the Agreement  
5 was executed and the date of such event.

6 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement  
7 only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for  
8 establishing class certification have been met and are met.

9 5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes  
10 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and  
11 Aggrieved Employees.

12 **6. RELEASE**

13 6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified  
14 Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to  
15 all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in  
16 interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's  
17 Released Claims against any of the Released Parties.

18 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved  
19 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all  
20 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in  
21 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA  
22 Claims against any of the Released Parties.

23 6.3 Notwithstanding anything that might be interpreted to the contrary in this Agreement,  
24 Plaintiff is not waiving any individual claims for wrongful termination or related claims which are the  
25 subject of a separate lawsuit filed by Plaintiff in San Joaquin County Superior Court, Case No. STK-CV-  
26 UWT-2021-0001625.

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1     **7.     SETTLEMENT ADMINISTRATION**

2             **7.1     Duties of Claims Administrator:** The Claims Administrator shall be responsible for: 1)  
3 receiving Class Member and Aggrieved Employee contact information and confirming addresses are  
4 valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts,  
5 including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members  
6 and Aggrieved Employee whose address or contact information as provided to the Claims Administrator  
7 is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification  
8 to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving,  
9 independently reviewing, and resolving any challenges (in consultation with Class Counsel and  
10 Defendant's Counsel) from Class Members or Aggrieved Employees, including any associated  
11 documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class  
12 Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or any opt out  
13 statements; 7) establishing a toll free telephone line and responding to inquiries and requests for  
14 information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)  
15 determining and paying the final amounts due to be paid under the Agreement after resolution of all  
16 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA  
17 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability  
18 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late  
19 opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual  
20 funds from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the  
21 statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the  
22 number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the  
23 number of total undeliverable Notice of Settlements; (e) the number of address traces performed for  
24 undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced  
25 addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the  
26 number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court  
27 regarding the final statistics of the administration and compliance with all payment obligations under the  
28 Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to

1 Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to  
2 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims  
3 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which  
4 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and  
5 obligations contemplated by the Agreement have been fully executed.

6 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will  
7 provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the  
8 Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the  
9 individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement  
10 will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net  
11 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,  
12 proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the  
13 class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class  
14 Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information  
15 regarding Class Member's and Aggrieved Employee's estimated Claim Amount.

16 7.3 Class Member Data and Mailing: No later than fourteen (21) calendar days after the  
17 Preliminary Approval Date, Defendant shall provide the Claims Administrator with the name, last known  
18 mailing address, last known telephone number, Social Security Number, start and end date of employment  
19 (if any) of each Class Member, and any other information the Claims Administrator needs to effectuate  
20 notice to Class Members and Aggrieved Employees as outlined herein. The Claims Administrator shall  
21 review the data to determine the number of Qualifying Workweeks for each Class Member and Aggrieved  
22 Employee. No later than fourteen (14) calendar days after receipt of such address information, the Claims  
23 Administrator will perform a national change of address ("NCOA") search, update the addresses per the  
24 results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as  
25 Exhibit 1, to each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The  
26 Claims Administrator shall maintain all information received from Defendant confidential to itself, and  
27 Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of Qualified  
28

1 Workweeks and estimated Claim Amounts for Class Members and Aggrieved Employees prior to mailing  
2 for quality assurance provided the personal identifying information is redacted and/or omitted.

3 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement  
4 is returned to the Claims Administrator as non-delivered on or before the conclusion of the Notice Period,  
5 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar  
6 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to  
7 determine a correct address using a single skip-trace, computer or other search using the name, address  
8 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within  
9 five (5) calendar days. Following each search that does not result in a corrected address, for those Class  
10 Members who appear to be current employees of Defendant at the time of the Preliminary Approval Date,  
11 the Claims Administrator shall contact Defendant's Counsel for assistance and Defendant shall cooperate  
12 in good faith with the Claims Administrator's reasonable efforts to obtain valid mailing addresses for  
13 Class Members to the extent they are active employees of Defendant. In the event the Notice of Settlement  
14 is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to  
15 submit any request to opt-out, dispute, or objection shall be the end of the Notice Period or 10 days from  
16 the date of the re-mailing, whichever is later. In the event the procedures in this Section are followed and  
17 the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by  
18 all terms of the Agreement, including the Releases contained in Section 6.

19 7.5 Responses to Notice of Settlement:

20 7.5.1 Opt-Outs: The Notice of Settlement shall provide that Class Members who wish  
21 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.  
22 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that  
23 he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants  
24 to be excluded from the settlement; (c) identify the case name and number (i.e. Mayorga v. Brown Strauss,  
25 Inc., STK-CV-UOE-2020-0010906); (d) be signed; and (e) be post-marked no later than the conclusion  
26 of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally  
27 sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members.  
28 The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine

1 whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of  
2 the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net Settlement  
3 Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or comment  
4 thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all  
5 terms of the Agreement and any order or final judgment thereon, regardless of whether they otherwise  
6 have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this Agreement as  
7 it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a  
8 Class Member.

9           **7.5.2 Objection Procedures:** Any Class Member who does not opt-out but who wishes  
10 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written  
11 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and  
12 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny  
13 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's  
14 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state  
15 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify  
16 the case name and number (i.e. Mayorga v. Brown Strauss, Inc., STK-CV-UOE-2020-0010906) (e) be  
17 signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline  
18 stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the  
19 Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to appear at the final  
20 approval hearing.

21           **7.5.3 Dispute Procedures:** Any Class Member who disputes the number of Qualifying  
22 Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)  
23 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;  
24 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing  
25 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two  
26 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the  
27 dispute. Defendant's records shall presumptively control unless the Class Member can produce  
28 documentation evidencing other periods of employment worked. If Defendants do agree with submitted

information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that Class Member's Claim Amount. If Defendants do not agree with the submitted information, Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator or Court.

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

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

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

*7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff:* Within seven (7) calendar days after the Final Approval Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's

Counsel. Defendant shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Claims Administrator within twenty-one (21) days after the Final Approval Date to be held in trust in a QSF. On the Effective Date, the Claims Administrator shall deliver payment of Class Counsel's attorney's fees and costs, the Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Claims Administrator Costs, and payment to Qualified Claimants and/or Aggrieved Employees as required under this Agreement and approved by Court.

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

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

7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim Amount.

7.8.4 The Claims Administrator shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this Agreement. Defendant agree to reasonably cooperate with the Claims Administrator to the extent necessary to determine the amount of the payroll tax payment required.

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

7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash

their settlement checks, the Claims Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Claims Administrator have been completed.

**8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

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

|                                                                                                                                                                                                                                                                              |                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| Last day for Defendant to provide Claims Administrator with Class Member information                                                                                                                                                                                         | Within 21 calendar days after the Preliminary Approval Date                                                                          |
| Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement                                                                                                                                            | Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendant                        |
| Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests                                                                                                                                                                          | 45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later |
| Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics                                                                                                                                               | Within 21 calendar days after end of the Notice Period                                                                               |
| Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel | Within 7 days after the Final Approval Date                                                                                          |

|                                                                                                                                                                                                                                       |                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Last day for Defendant to fund settlement                                                                                                                                                                                             | Within 21 calendar days after Final Approval Date                              |
| Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees | The Effective Date                                                             |
| Last day for Qualified Members and Aggrieved Employees to cash settlement checks                                                                                                                                                      | 120 days after issuance of checks to Qualified Members and Aggrieved Employees |
| Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries                                                                                                                      | Within 14 days after settlement check cashing deadline                         |
| Last day for Claims Administrator to provide Parties with compliance declaration                                                                                                                                                      | Within 21 days after settlement check cashing deadline                         |

## 9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from

1 Class Counsel. With regard to the final approval documents, a similar one-week maximum review and  
2 response time shall be observed by the Parties. The Parties will request that the Court's preliminary  
3 approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and  
4 PAGA Settlement.

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

14 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed  
15 Agreement.

16 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during  
17 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and  
18 appropriate to assure effective communication to individual Class Members of information about their  
19 rights and obligations under this Agreement.

20 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the  
21 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if  
22 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the  
23 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice  
24 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of  
25 the Claim Administrator's mailings including tracing and re-mailing efforts.

26 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which  
27 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,  
28 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the

1 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's  
2 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)  
3 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to  
4 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

5 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the  
6 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the  
7 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside  
8 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class  
9 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and  
10 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and  
11 assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each  
12 other and assist the Claims Administrator as needed or requested in completing the distribution of any  
13 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with  
14 the Claims Administrator, will certify to the Court completion of all payments required to be made by this  
15 Agreement.

16 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness  
17 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action  
18 and PAGA Settlement and Final Judgment.

19 9.4 Notice to LWDA: Plaintiff agrees to provide notice to the Labor and Workforce  
20 Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

## 21 10. MISCELLANEOUS TERMS

22 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,  
23 20% or more of the Class Members have submitted proper and timely requests to opt-out in accordance  
24 with the provisions of the Agreement, Defendant may, at its election, rescind the Agreement and all actions  
25 taken in its furtherance will be thereby null and void. Defendant must exercise this right of rescission, in  
26 writing, to Class Counsel, within seven (7) calendar days after the Claims Administrator notifies the  
27 Parties of the total number of opt-outs. If the option to rescind is exercised, then any Claims Administrator  
28 Costs shall be paid by Defendant.

1        10.2 Defendant's Estimated Number of Workweeks in the Class Period: Defendant has  
2 represented that there are an estimated 10,665 workweeks during the Class Period. In the event the  
3 number of workweeks during the Class Period is more than 12,798 (*i.e.*, greater than 20% more than  
4 10,665), then the Gross Settlement Amount shall be increased proportionally by the workweeks in  
5 excess of 12,798, multiplied by the Class Period per-week value. For example, if it is found that there  
6 are actually 13,798 workweeks in the Class Period, or 1,000 workweeks over the threshold, then that  
7 1,000 workweeks would be multiplied by the same per workweek valuation (\$240,000.00 divided by  
8 10,665, or \$22.50 per workweek) for an increase to the Gross Settlement Amount of \$22,500.00.

9        10.3 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF  
10 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT  
11 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND  
12 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN  
13 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR  
14 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH  
15 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON  
16 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT  
17 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS  
18 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX  
19 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS  
20 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE  
21 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY  
22 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR  
23 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY  
24 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO  
25 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT  
26 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX  
27 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON  
28 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX

1 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED  
2 BY THIS AGREEMENT.

3 10.4 No Prior Assignments: The Parties represent, covenant, and warrant that they have not  
4 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
5 any person or entity any portion of any liability, claim, demand, action, cause of action or right released  
6 and discharged in this Agreement.

7 10.5 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by  
8 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the  
9 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement  
10 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

11 10.6 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set  
12 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this  
13 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

14 10.7 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval Date,  
15 judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties  
16 to enforce the terms therein.

17 10.8 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish  
18 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,  
19 execution of such other documents and the taking of such other action as may reasonably be necessary to  
20 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including  
21 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court  
22 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

23 10.9 No Admission of Liability: Neither the acceptance nor the performance by Defendant of  
24 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to  
25 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the  
26 Complaint, the representative character of the Action, the validity of any of the claims that were or could  
27 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of  
28 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by

Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation.

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

To Plaintiff and the Class:

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

To Defendant:

Brandon R. McKelvey  
Timothy B. Nelson  
Douglas R. Leach  
Medina McKelvey LLP  
925 Highland Pointe Drive, Suite 300  
Roseville, CA 95678  
Telephone: (916) 960-2211  
Facsimile: (916) 742-5488

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

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

1        10.13 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys  
2 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover  
3 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except  
4 as expressly provided in this Agreement. The Parties stipulate and agree that the San Joaquin County  
5 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil  
6 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of  
7 the Agreement after default by the other party may recover reasonable attorney's fees and costs related  
8 thereto.

9        10.14 No Modifications: This Agreement may be amended or modified only by a written  
10 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be  
11 discharged except by performance in accordance with its terms.

12        10.15 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and  
13 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement  
14 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this  
15 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of  
16 this Agreement.

17        10.16 Class Member Signatories: Because the Action has not yet been certified, and the Class  
18 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member  
19 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement  
20 may be executed on behalf of all Class Members by the Class Representative.

21        10.17 Counterparts: This Agreement shall become effective upon its execution by all of the  
22 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement  
23 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed  
24 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force  
25 and effect of originals.

26        10.18 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been  
27 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and  
28 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance

with, and governed by, the substantive laws of the State of California without giving effect to that State's choice of law principles.

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

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

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

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

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

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

10.25 Captions: The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

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

**For Plaintiff:**

Date: 7/8/2021

DocuSigned by:  
*Jose Mayorga*  
DB7189736754416

Jose Mayorga

**FOR Defendant:**

Date: \_\_\_\_\_

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

For Brown Strauss, Inc.

APPROVED AS TO FORM

Dated: 7/8/21

**Shimoda Law Corp.**

By: *[Signature]*

Galen T. Shimoda  
Justin P. Rodriguez  
Brittany V. Berzin  
Attorneys for Plaintiff and Aggrieved Employees

APPROVED AS TO FORM

**MEDINA MCKELVEY LLP**

Dated: \_\_\_\_\_

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

Brandon R. McKelvey  
Timothy B. Nelson  
Douglas R. Leach  
Attorneys for Defendant

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

3 **For Plaintiff:**

4 Date: \_\_\_\_\_

5 \_\_\_\_\_  
6 Jose Mayorga

7 **FOR Defendant:**

8 Date: 7/11/2021

9   
10 By: \_\_\_\_\_  
11 For Brown Strauss, Inc.

12  
13 APPROVED AS TO FORM

**Shimoda Law Corp.**

14  
15 Dated: \_\_\_\_\_

16 By: \_\_\_\_\_  
17 Galen T. Shimoda  
18 Justin P. Rodriguez  
19 Brittany V. Berzin  
20 Attorneys for Plaintiff and Aggrieved  
21 Employees

22 APPROVED AS TO FORM

**MEDINA MCKELVEY LLP**

23 Dated: July 12, 2021

24   
25 By: \_\_\_\_\_  
26 Brandon R. McKelvey  
27 Timothy B. Nelson  
28 Douglas R. Leach  
Attorneys for Defendant

# **EXHIBIT 1**

CALIFORNIA SUPERIOR COURT  
FOR THE COUNTY OF SAN JOAQUIN

JOSE MAYORGA, individually and on behalf of  
all other similarly situated employees,

Plaintiff,

vs.

BROWN STRAUSS, INC., a Delaware  
Corporation; and DOES 1 to 100, inclusive,

Defendant.

Case No. **STK-CV-UOE-2020-0010906**

**CLASS ACTION**

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

**ATTENTION:** All non-exempt employees who have or continue to work for Brown Strauss, Inc. in California from December 28, 2016 to \_\_\_\_\_ (the "Class Members").

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

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

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

**I. BACKGROUND OF THE CASE**

On December 28, 2020, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of San Joaquin on behalf of himself and Class Members. The First Amended Complaint was filed April 5, 2021. The term "Action" means this putative class action pending in the Superior Court of California for the County of San Joaquin, Case No. STK-CV-UOE-2020-0010906. The Class Period is December 28, 2016, to \_\_\_\_ (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendant violated California law by failing to pay overtime, failing to provide meal periods, failing to provide rest periods, failing to pay final wages, committing wage statement violations, failing to maintain accurate records, failing to provide paid sick leave, violating Labor Code section 558, and failing to pay accrued and unused vacation. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"),

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

## **II. SUMMARY OF THE PROPOSED SETTLEMENT**

### **A. The Amount of the Settlement**

Under the terms of the Agreement, Defendant agrees to pay a total sum of Two Hundred Forty Thousand Dollars and No Cents (\$240,000.00) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$84,000.00, attorneys' costs not to exceed \$12,500.00, Claims Administrator Costs estimated not to exceed \$5,000.00, Class Representative's Enhancement Payment of \$5,000.00, any employer side taxes attributable to payments allocated as wages, and \$10,000.00 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000.00 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all non-exempt employees who have or continue to work for Defendant in California from December 23, 2019 to \_\_\_\_\_.

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

### **B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees**

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

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

### **C. Calculations to Be Based on Defendant' Records and Resolution of Workweek Disputes**

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

**D. Release of Claims**

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

Class members who do not opt out will be deemed to have released all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period.

Aggrieved Employees will be deemed to have released all claims that were brought under the Private Attorneys General Act, Labor Code § 2698 et seq., based on the facts or claims alleged in the Action during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

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

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

**E. Attorneys' Fees and Costs**

Defendant has agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$84,000.00, and attorneys' costs not to exceed \$12,500.00. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

**F. Reasonableness of Settlement**

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

**III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER**

**A. Participating in the Settlement**

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

**B. Excluding Yourself from the Settlement**

If you do not wish to participate in the settlement, you may be excluded (i.e., "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (i.e. Mayorga v. Brown Strauss, Inc., STK-CV-UOE-2020-0010906); (d) be signed; and (e) be post-marked no later than \_\_\_\_\_. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

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

**C. Objection to Settlement**

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. Mayorga v. Brown Strauss, Inc., STK-CV-UOE-2020-0010906) (e) be signed; and (f) be post-marked no later than \_\_\_\_\_. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

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

**IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS**

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

**V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing in Department \_\_\_, [address] on \_\_\_ at \_\_\_ to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

**VI. ADDITIONAL INFORMATION**

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

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

Brandon R. McKelvey  
Timothy B. Nelson  
Douglas R. Leach  
Medina McKelvey LLP  
925 Highland Pointe Drive, Suite 300  
Roseville, CA 95678  
Telephone: (916) 960-2211  
Facsimile: (916) 742-5488  
*On behalf of Defendant*

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

**BY ORDER OF THE COURT**

# **EXHIBIT B**

FILED BY FAX

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

9 Attorneys for Plaintiff JOSE MAYORGA

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2021 APR -5 PM 1:33

ANDREW E. RILEY, CLERK

BY RUTH GUNN  
JPM

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SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF SAN JOAQUIN

JOSE MAYORGA, individually and on behalf  
of all other similarly situated employees,

Plaintiff,

vs.

BROWN STRAUSS, INC., a Delaware  
Corporation; and DOES 1 to 100, inclusive,  
Defendants.

Case No. STK-CV-UOE-2020-10906

CLASS ACTION

FIRST AMENDED COMPLAINT

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

DEMAND FOR JURY TRIAL

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

FIRST AMENDED CLASS ACTION COMPLAINT

## INTRODUCTION

1. This is a class action and representative Private Attorneys General Act action brought by Plaintiff for failure to pay overtime wages, failure to provide legally compliant meal and rest periods, failure to provide accurate wage statements, failure to pay all sick leave wages owed, failure to pay all wages due upon termination, unfair competition, and statutory and civil penalties for violations of the California Labor Code.

## JURISDICTION AND VENUE

2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 4.

3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that Defendant resides in San Joaquin County. In addition, some of the wrongful acts and violations of law asserted herein occurred within San Joaquin County where Plaintiff performed his work, and Defendant's obligation to pay wages arose in San Joaquin County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

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

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**PARTIES**

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

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

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

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

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

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

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

**CLASS ALLEGATIONS**

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

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

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

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

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

- 18 (1) Whether Defendant included all non-discretionary remuneration paid to  
19 employees when calculating their regular rate of pay for overtime, sick leave,  
20 and/or other premium purposes;
- 21 (2) Whether Defendant had a policy and/or practice of failing to authorize second  
22 meal periods and third rest periods for employees working longer than ten hours  
23 in a day;
- 24 (3) Whether Defendants required employees to unlawfully forfeit accrued PTO by  
25 preventing any accrued vacation beyond forty hours from being carried over to  
26 the next year;
- 27 (4) Whether Defendants failed to pay all accrued and unused PTO at an employee's  
28 termination;

1 (5) Whether as a result of Defendants' policies and practices Plaintiffs and putative  
2 class members received all wages, due and owing, at the time of their termination  
3 or separation; and

4 (6) Whether Defendants provided Plaintiffs and putative class members with wage  
5 statements that complied with Labor Code section 226.

6 (c) Typicality: Plaintiffs' claims are typical of the claims of the members of the putative  
7 class. The putative class also sustained damages arising out of Defendants' common  
8 course of conduct in violation of the law as complained of herein. Plaintiff and all  
9 members of the putative class were non-exempt employees who were not paid all  
10 overtime owed, not paid all accrued and unused PTO at separation, not able to carry over  
11 more than 40 hours of accrued PTO from one year to the next (being unlawfully required  
12 to forfeit the remainder), provided all meal and rest periods or paid premiums in lieu  
13 thereof, and were not paid all sick leave wages owed resulting in unpaid wages at their  
14 separation. Additionally, Defendants issued Plaintiff and all members of the putative  
15 class wage statements that did not comply with Labor Code section 226. As a result,  
16 Plaintiff and each member of the putative class will have suffered the same type of harm  
17 and seek the same type of recovery based on the same legal theories.

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

24 (e) Superiority: A class action is superior to other available means for the fair and efficient  
25 adjudication of the controversy since individual joinder of all members of the putative  
26 class is impracticable. Class action treatment will permit a larger number of similarly  
27 situated persons to prosecute their common claims in a single forum simultaneously,  
28 efficiently, and without the unnecessary duplication of effort and expense that numerous

1 individual actions would engender. Further, as damages suffered by each individual  
2 member of the class may be relatively small, the expenses and burden of the individual  
3 litigation would make it difficult or impossible for individual members of the class to  
4 redress the wrongs done to them, and an important public interest will be served by  
5 addressing the matter as a class action. The cost to the court system of adjudication of  
6 such individualized litigation would be substantial. Individualized litigation would also  
7 present the potential for inconsistent or contradictory judgments.

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

#### 10 GENERAL ALLEGATIONS

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

13 16. Plaintiff and similarly situated employees worked for Defendants as non-exempt,  
14 hourly employees. Plaintiff and similarly situated employees received non-discretionary wages as  
15 part of their pay, which included wages such as various types of bonuses (safety, attendance, etc.),  
16 and other forms of quarterly and annual bonuses and incentive payments. For example, one type of  
17 incentive bonus was referred to as a "profit sharing plan." However, payment under the "profit  
18 sharing plan" was based on things like employee attendance, hours of work, the quality and quantity  
19 of an employee's work, the production and efficiency of the employee, and employees' ability to  
20 receive their share of the "profit sharing plan" was dependent on their continuing to be employed  
21 after the period for which the "profit" determination was made. Defendants did not incorporate the  
22 value of any of these types of non-discretionary wages when calculating employees' regular rate of  
23 pay for overtime, sick leave wages, and other premium pay purposes. This resulted in Plaintiff and  
24 similarly situated employees failing to receive all their overtime, sick leave wages, and other similar  
25 premium wages that depended on the regular rate of pay calculation.

26 17. Defendants failed to authorize and permit Plaintiff and similarly situated employees to  
27 take all meal and rest periods owed to them. Defendants did not have any written meal and rest period  
28 policies authorizing a second meal period or third rest period when working longer than ten (10) hours

1 in a shift. Plaintiff and similarly situated employees were deprived of second meal periods and their  
2 third rest period when working longer than ten (10) hours a day. Defendants also failed to maintain  
3 records of when employees clocked in and out for any meal periods.

4 18. Defendants issued Plaintiff and similarly situated employees' paystubs that did not  
5 correctly itemize the applicable rates of pay in effect for all hours worked and did not accurately  
6 state all gross and net wages earned. Defendants failed to issue paystubs to Plaintiff and similarly  
7 situated employees showing any corrected overtime rate of pay, hours, or wages earned as a result of  
8 the quarterly and/or annual bonuses that they paid out.

9 19. Plaintiffs and similarly situated employees had unpaid overtime, sick leave wages, and  
10 meal and rest period premiums as a result of Defendants' practices. Defendants prohibited employees  
11 from carrying over any accrued but unused PTO (Paid Time Off) beyond forty (40) hours into the new  
12 year, which caused employees to unlawfully forfeit accrued PTO wages. Defendants also failed to pay  
13 out all accrued, but unused PTO at the time of their separation. These amounts remained unpaid at the  
14 time of Plaintiffs' and similarly situated employees' separation and remain unpaid to this date.

#### 15 CAUSES OF ACTION

#### 16 FIRST CAUSE OF ACTION 17 FAILURE TO PAY OVERTIME WAGES 18 (As to all Defendants)

19 20. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 19 as though fully  
20 set forth herein.

21 21. During the period Plaintiff was employed by Defendants, Defendants were required to  
22 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of  
23 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for  
24 hours worked in excess of twelve (12) hours per day. See, e.g., IWC Wage Order No. 4, section (3)(A);  
25 Cal. Lab. Code §§ 510, 1194.

26 22. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day  
27 and/or forty (40) hours per week on several occasions while employed by Defendants. However,  
28 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime wages

1 earned at 1.5x their regular rate of pay due to their failure to account for all non-discretionary wage  
2 payments (e.g. bonuses, incentives, etc.) when performing the regular rate calculation.

3 23. Plaintiff and similarly situated employees were not exempt from overtime protections  
4 employees under the California Wage Orders and Labor Code.

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

8 **SECOND CAUSE OF ACTION**  
9 **MEAL PERIOD VIOLATIONS**  
10 **(As to all Defendants)**

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

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

15 27. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section  
16 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)  
17 minutes for each work period of more than five (5) hours.

18 28. California Labor Code section 512 and Wage Order No. 4 section 11(B) further  
19 provide that employers may not employ employees for a work period for more than ten (10) hours  
20 per day without providing the employee with a second meal period of at least thirty (30) minutes.  
21 However, if the total hours worked is no more than twelve (12) hours, the second meal period may  
22 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one  
23 (1) hour of pay at their regular rate of compensation for each meal period not provided.

24 29. Defendants employed Plaintiff and similarly situated employees for periods of more  
25 than ten (10) hours without providing a second meal break of at least thirty (30) minutes. Plaintiff  
26 and similarly situated employees did not waive their rights to all meal periods throughout their  
27 employment.

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

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

4 **THIRD CAUSE OF ACTION**  
5 **REST PERIOD VIOLATIONS**  
6 **(As to all Defendants)**

7 32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully  
8 set forth herein.

9 33. An employer must provide an employee a rest period in accordance with the  
10 applicable Wage Order and California Labor Code section 226.7.

11 34. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an  
12 employer to provide a rest period of not less than ten (10) minutes for each work period of more than  
13 four (4) hours or a major fraction thereof.

14 35. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly  
15 situated employees to take third rest period of at least ten (10) minutes when they worked longer than  
16 ten (10) hours.

17 36. Defendants further failed to pay Plaintiff and similarly situated employees the  
18 applicable rest period premiums for any such missed rest periods.

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

22 **FOURTH CAUSE OF ACTION**  
23 **WAGE STATEMENT VIOLATIONS**  
24 **(As to all Defendants)**

25 38. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 37 as though fully  
26 set forth herein.

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

*(1) gross wages earned, (2) total hours worked by the employee, except for  
any employee whose compensation is solely based on a salary and who is  
exempt from payment of overtime under subdivision (a) of Section 515 or*

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

20 40. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an  
21 itemized statement or failed to provide an accurate and complete itemized statement showing the  
22 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not  
23 accurately itemize all applicable hourly rates in effect during the pay period and gross and net wages  
24 earned. Plaintiff and similarly situated employees were not able to promptly and easily determine  
25 their accurate hourly rates, including overtime and sick leave rates of pay from their paystubs alone.  
26 Defendants would issue bonus and incentive payments on separate paystubs and would not provide  
27 any aggregate or correct total to what employees were receiving like they would have had the  
28 information been provided all on one paystub. Plaintiff and similarly situated employees suffered  
confusion over whether they received all wages owed and were prevented from effectively  
challenging information on their wage statements.

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

**FIFTH CAUSE OF ACTION  
WAITING TIME PENALTIES  
(As to all Defendants)**

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

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

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

45. Plaintiff and similarly situated employees did not receive all wages, including overtime wages and used sick leave pay at the correct rates that were owed or accrued but unused PTO at their termination or within the required time after their separation from employment.

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

47. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees earned overtime and utilized sick leave pay at during the same periods for which non-discretionary remuneration beyond an employee's basic hourly rate was being paid. It was also aware that accrued and unused PTO remained at an employee's separation based on payroll records, but did not pay out those amounts anyways. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

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

**SIXTH CAUSE OF ACTION**  
**UNFAIR COMPETITION**  
**(As to Defendant and DOES 1 to 100)**

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

50. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1

1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See  
2 California Business and Professions ("B&P") Code § 17200.

3 51. Plaintiff and similarly situated employees were not paid all wages owed, including  
4 overtime wages, meal and rest period premiums, accrued and unused (or unlawfully forfeited) PTO, or  
5 paid sick leave during their employment or any time thereafter.

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

9 53. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the  
10 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to  
11 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code  
12 sections 17203, 17208, violations of California Labor Code sections 227.3, 245, et seq., 510, 512, and  
13 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing  
14 of this Action.

15 **SEVENTH CAUSE OF ACTION**  
16 **VIOLATION OF LABOR CODE § 227.3**  
17 **(As to all Defendants)**

18 54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully  
19 set forth herein.

20 55. Labor Code section 227.3 provides that "whenever a contract of employment or employer  
21 policy provides for paid vacations, and an employee is terminated without having taken off his vested  
22 vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such  
23 contract of employment or employer policy respecting eligibility or time served."

24 56. At the time of termination, Defendants failed to pay Plaintiff and similarly situated  
25 employees their accrued PTO.

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

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

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

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

- a. Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- b. Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- c. Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- d. Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- e. Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- f. Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- g. Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- h. Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- i. Violation of Labor Code § 227.3 (Failure to Pay Accrued and Unused Vacation)

60. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(1)(2).

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

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**DAMAGES**

**WHEREFORE Plaintiff requests relief as follows:**

1. **A jury trial;**
2. **As to the First Cause of Action:**
  - a. **Wages in an amount to be proven at trial;**
  - b. **Interest for the wages due pursuant to California Labor Code section 1194;**
  - c. **For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;**
3. **As to the Second Cause of Action:**
  - a. **Wages in an amount to be proven at trial;**
  - b. **Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;**
4. **As to the Third Cause of Action:**
  - a. **Wages in an amount to be proven at trial;**
  - b. **Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;**
5. **As to the Fourth Cause of Action:**
  - a. **Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);**
  - b. **For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);**
6. **As to the Seventh Cause of Action:**
  - a. **For all unpaid vacation wages due and owing;**
  - b. **For attorneys' fees, costs, and interest pursuant to Labor Code §§ 218.5 and 218.6;**

1 7. As to the Eighth Cause of Action:

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

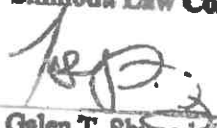
12 8. For such other and further relief as this Court may deem just and proper,  
13 including, but not limited to:

- 14 a. Wages as proved at trial;  
15 b. Injunctive and Declaratory relief;  
16 c. Attorney's fees and costs as provided for by law; and  
17 d. Interest.  
18

19 Dated: March 19, 2021

Shimoda Law Corp.

20 By:

21   
22 Galen T. Shimoda  
23 Justin P. Rodriguez  
24 Brittany V. Berzin  
25 Attorneys for Plaintiff  
26  
27  
28

1 *Mayorga v. Brown Strauss, Inc.*  
2 *San Joaquin County Superior Court of California STK-CV-UOE-2020-10906*

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

5 I, Rylee K. Fonseca, declare that:

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

8 On May 3, 2021, I served the following documents on the party below:

- 9 • Filed First Amended Complaint

10 Brandon R. McKelvey (SBN 217002)  
11 Timothy B. Nelson (SBN 235279)  
12 Douglas R. Leach (SBN 325955)  
13 **MEDINA MCKELVEY LLP**  
14 925 Highland Pointe Drive, Suite 300  
15 Roseville, California 95678  
16 Telephone: (916) 960-2211  
17 Facsimile: (916) 742-5488  
18 Email: [Brandon@medinamckelvey.com](mailto:Brandon@medinamckelvey.com)  
19 [Tim@medinamckelvey.com](mailto:Tim@medinamckelvey.com)  
20 [dou@medinamckelvey.com](mailto:dou@medinamckelvey.com)  
21 [Samantha@medinamckelvey.com](mailto:Samantha@medinamckelvey.com)  
22 [Andrew@medinamckelvey.com](mailto:Andrew@medinamckelvey.com)  
23 [Jenelle@medinamckelvey.com](mailto:Jenelle@medinamckelvey.com)

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

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

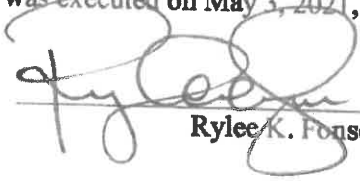
[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown  
above. No error was reported by the e-mail service that I used.

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

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing  
2 is true and correct, and that this declaration was executed on May 3, 2021, at Elk Grove, California

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5 Rylee K. Fonseca  
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PROOF OF SERVICE

# **EXHIBIT C**



Shimoda Law Corp.  
9401 East Stockton Blvd.  
Suite #200  
Elk Grove, CA 95624  
Ph. (916) 525-0716  
Fax (916) 760-3733  
www.shimodalaw.com

December 23, 2020

**For Online Filing:**

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

**Re: *Mayorga v. Brown Strauss, Inc.***

Dear Labor Commissioner,

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

Brown Strauss, Inc.  
2495 Uravan Street  
Aurora, CO 8011

Ryan Secrist  
2495 Uravan Street  
Aurora, CO 8011

Russell Werner  
2495 Uravan Street  
Aurora, CO 8011

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Brown Strauss, Inc., Ryan Secrist, and Russell Werner ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all of Defendant's hourly non-exempt employees who have or continue to work for Defendant in California. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

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**A. FACTS**

Plaintiff and Aggrieved Employees worked for Defendants as non-exempt, hourly employees. Plaintiff and Aggrieved Employees received non-discretionary wages as part of their pay, which included wages such as various types of bonuses (safety, attendance, etc.), and other forms of quarterly and annual bonuses and incentive payments. For example, one type of incentive bonus was referred to as a "profit sharing plan." However, payment under the "profit sharing plan" was based on things like employee attendance, hours of work, the quality and quantity of an employee's work, the production and efficiency of the employee, and employees' ability to receive their share of the "profit sharing plan" was dependent on their continuing to be employed after the period for which the "profit" determination was made. Defendants did not incorporate the value of any of these types of non-discretionary wages when calculating employees' regular rate of pay for overtime, sick leave wages, and other premium pay purposes. This resulted in Plaintiff and Aggrieved Employees failing to receive all their overtime, sick leave wages, and other similar premium wages that depended on the regular rate of pay calculation.

Defendants failed to authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Defendants did not have any written meal and rest period policies authorizing a second meal period or third rest period when working longer than ten (10) hours in a shift. Plaintiff and Aggrieved Employees were deprived of second meal periods and their third rest period when working longer than ten (10) hours a day. Defendants also failed to maintain records of when employees clocked in and out for any meal periods.

Defendants to issued Plaintiff and Aggrieved Employees paystubs that did not correctly itemize the applicable rates of pay in effect for all hours worked and did not accurately state all gross and net wages earned. Defendants failed to issue paystubs to Plaintiff and Aggrieved Employees showing any corrected overtime rate of pay, hours, or wages earned as a result of the quarterly and/or annual bonuses that they paid out.

Plaintiff and Aggrieved Employees had unpaid overtime, sick leave wages, and meal and rest period premiums as a result of Defendants' practices. Defendants prohibited employees from carrying over any accrued but unused PTO (Paid Time Off) beyond forty (40) hours into the new year, which caused employees to unlawfully forfeit accrued PTO wages. Defendants also failed to pay out all accrued, but unused PTO at the time of their separation. These amounts remained unpaid at the time of Plaintiff's and Aggrieved Employees' separation and remain unpaid to this date

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**B. ALLEGATIONS AND CHARGES**

**Count 1 – Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)**

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

**Count 2 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)**

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take all legally compliant meal periods they were entitled to pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

**Count 3 – Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)**

Labor Code section 226.7 and Wage Order No. 4, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take all legally compliant rest periods they were entitled to pursuant to California law. Defendant also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.



**Count 4 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)**

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

**Count 5 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)**

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

**Count 6 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)**

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

**Count 7 – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)**

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of



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

**Count 8 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)**

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

**Count 9 – Violation of Labor Code § 227.3 (Failure to Pay Accrued and Unused Vacation)**

Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate. See Labor Code § 227.3. Defendants had a policy that provided Plaintiff and Aggrieved Employees with PTO, however upon Plaintiff's and Aggrieved Employees' termination or separation failed to pay Plaintiff and Aggrieved Employees the unused PTO time they had accrued. Defendants



Page 6 of 6

also unlawfully required Plaintiff and Aggrieved Employees to forfeit any accrued PTO beyond forty hours due to a prohibition on carrying over any PTO above forty hours to the new year. This was against the law.

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

Very truly yours,

**Shimoda Law Corp.**

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

  
Justin P. Rodriguez

JPR:cl

cc: Client via e-mail

1 *Mayorga v. Brown Strauss, Inc.*

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

4 I, Caitlyn A. Lopez, declare that:

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

7 On December 23, 2020, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

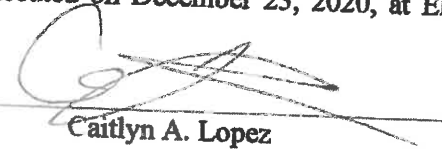
|                                 |                                                              |                                                       |
|---------------------------------|--------------------------------------------------------------|-------------------------------------------------------|
| 9<br>10<br>11<br>12<br>13<br>14 | Brown Strauss, Inc.<br>2495 Uravan Street<br>Aurora, CO 8011 | Ryan Secrist<br>2495 Uravan Street<br>Aurora, CO 8011 |
|                                 | Russell Werner<br>2495 Uravan Street<br>Aurora, CO 8011      |                                                       |

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

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

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

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct, and that this declaration was executed on December 23, 2020, at Elk Grove,  
California.

25  
26   
27 Caitlyn A. Lopez  
28

# **EXHIBIT D**

| <b>Date</b> | <b>Description</b>                                                                                                        | <b>Amount</b> |
|-------------|---------------------------------------------------------------------------------------------------------------------------|---------------|
| 12/24/20    | Payment to LWDA - PAGA Filing Fee                                                                                         | \$ 75.00      |
| 12/24/20    | Certified Mail - PAGA Letters to Employers                                                                                | \$ 12.60      |
| 12/24/20    | Payment to Court - Complaint Fee Superior Court                                                                           | \$ 435.00     |
| 12/24/20    | Priority Mail - Complaint to Court                                                                                        | \$ 7.55       |
| 12/31/20    | Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Westlaw Legal Research | \$ 500.00     |
| 1/7/21      | Priority Mail - Complex Fees to Court                                                                                     | \$ 7.15       |
| 1/7/21      | Payment to Court - Complex Fees                                                                                           | \$ 1,000.00   |
| 1/19/21     | ALS Fee - Service of Complaint to Brown Strauss, Inc.                                                                     | \$ 45.00      |
| 3/3/21      | Mediation - Mediation fee                                                                                                 | \$ 7,105.84   |
| 3/19/21     | Priority Mail - Stipulation to Amend to Court                                                                             | \$ 7.40       |
| 3/19/21     | Payment to Court - Stipulation to Amend                                                                                   | \$ 20.00      |
| 4/5/21      | Priority Mail - First Amended Complaint to Court                                                                          | \$ 7.40       |
| 5/25/21     | Mediation - Attorney Meal                                                                                                 | \$ 19.08      |
| 6/9/21      | Priority Mail - Joint Case Management Statement to Court                                                                  | \$ 7.40       |
| 8/20/21     | ALS Fee - Preliminary Approval Motion to Court                                                                            | \$ 190.26     |
| 8/20/21     | Payment to Court - Preliminary Approval Motion                                                                            | \$ 60.00      |
| 8/20/21     | Priority Mail - Preliminary Approval Motion to OC                                                                         | \$ 7.40       |
| 8/24/21     | Priority Mail - Re-Notice of Preliminary Approval Motion to OC                                                            | \$ 7.40       |
| 9/10/21     | Priority Mail - Case Management Statement to Court                                                                        | \$ 7.40       |
| Anticipated | ALS Fee - Final Approval Motion to Court                                                                                  | \$ 190.25     |
| Anticipated | Payment to Court - Final Approval Motion                                                                                  | \$ 60.00      |
| Anticipated | UPS - Final Approval Motion to OC                                                                                         | \$ 27.00      |
| Anticipated | Priority Mail - Re-Notice of Final Approval Motion to OC                                                                  | \$ 7.40       |
| Anticipated | Priority Mail - Case Management Statement to Court                                                                        | \$ 7.40       |
| Anticipated | Priority Mail - Compliance Declarations to Court                                                                          | \$ 7.40       |
| Anticipated | CourtCall - Compliance Hearing                                                                                            | \$ 94.00      |

**TOTAL: \$ 9,915.33**

# **EXHIBIT E**

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

6 Attorneys for Plaintiff JOSE MAYORGA  
individually and on behalf of similarly situated employees  
7  
8

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN JOAQUIN**

11 JOSE MAYORGA, individually and on behalf  
of all other similarly situated employees,

12 Plaintiff,

13 vs.

14 BROWN STRAUSS, INC., a Delaware  
15 Corporation; and DOES 1 to 100, inclusive,  
16 Defendants.

**Case No. STK-CV-UOE-2020-0010906**

**CLASS ACTION**

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

Date: February 8, 2022

Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara Kronlund

Filed: December 28, 2020

FAC Filed: April 5, 2021

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

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

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention  
9 that Defendant Brown Strauss, Inc. ("Defendant") failed to pay overtime wages, failed to provide meal  
10 periods, failed to provide rest periods, failed to provide accurate wage statements, failed to pay final  
11 wages, engaged in unfair competition, and failed to pay accrued vacation. Plaintiff also alleged liability  
12 for civil penalties under the Private Attorneys General Act ("PAGA"). These claims were based  
13 allegations that Defendant violated California law by failing to incorporate the value of  
14 nondiscretionary wages into Plaintiff's and similarly situated employees' regular rates of pay for the  
15 purpose of calculating overtime, sick time, and other premium pay. The PAGA, waiting time penalty,  
16 wage statement violation, and unfair competition claims also derive from these violations.

17 3. Plaintiff is the only named representative in this matter. From our initial investigations  
18 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a  
19 class action. We filed the action on or about December 28, 2020. Plaintiff exhausted administrative  
20 remedies through the Labor and Workforce Development Agency ("LWDA") prior to amending the  
21 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on December 23, 2020 setting  
22 forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is  
23 being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified  
24 mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the  
25 LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65 days.  
26 As such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First  
27 Amended Complaint on April 5, 2021. A true and correct copy of Plaintiff's operative Complaint is  
28

1 filed with this Motion as Exhibit B. A copy of the complaint was uploaded to the LWDA on May 4,  
2 2021, after we received an endorsed copy back from Court.

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

4 5. Defendant is represented in this matter by Brandon R. McKelvey, Timothy B. Nelson,  
5 and Douglas Leach of Medina McKelvey. From the beginning, Defendant has contested the merits of  
6 this case, the suitability of the case for class action or representative treatment, the manageability of the  
7 case at trial, and Plaintiff's ability to prove a violation in each pay period for each employee among  
8 other defenses and contentions they made challenging the propriety of this action. Defendant further  
9 contended that, even assuming there was a finding supporting the imposition of PAGA penalties, the  
10 Court would likely exercise its discretion to substantially reduce any such penalties owed based on  
11 evidence of good faith attempts to comply with Labor Code obligations by Defendant.

12 Notwithstanding its agreement to settle this matter, Defendant believes the practices Plaintiff is  
13 contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state  
14 and federal employment laws with respect to Plaintiff and Class Members. Also, Defendant has  
15 contended that this matter is not appropriate for class certification outside of this proposed class  
16 settlement.

17 6. Based on the expected testimony from Plaintiff and Class Members, a review of  
18 Defendant's policies and procedures and other documents relating to the alleged claims, information on  
19 the number of Class Members, Class Members' dates of employment, and a representative sample of  
20 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light  
21 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that  
22 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The  
23 length and risks of trial and other normal perils of litigation that impact the value of the claims were also  
24 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of  
25 potential class certification issues as well as the uncertainty of class certification, the difficulties of  
26 complex litigation, and the lengthy process of establishing specific damages and various possible delays  
27 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the  
28 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on

1 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages  
2 at separation, which would eliminate the value of the waiting time penalty entirely. Overall, I believe it  
3 is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation  
4 and potentially obtain zero funds to the class due to legal or factual issues in the case.

5         7. My office, including my partner, Galen T. Shimoda, my paralegals, and myself, along  
6 with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for  
7 such claims. The parties engaged in informal discovery and exchange of documents, including a sample  
8 of payroll records for putative class members, the number of putative class members, the number of  
9 workweeks, and Defendants' relevant policies for the entirety of the statute of limitations applicable to  
10 the alleged claims. The discovery covered all aspects of the asserted claims, including certification  
11 issues, merits issues, damages, the scope of Class Members, the content and implementation of the wage  
12 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.  
13 From this production we were able to determine information critical to a reliable damages analysis such  
14 as the average hourly rate, average daily hours worked, average number of workweeks and pay periods  
15 that had potential violations based on the asserted claims, the frequency with which violations occurred  
16 in a given week and/or pay period, and the number for former employees. This information allowed my  
17 office to assess both liability and damages and create an accurate damages model. Plaintiff assisted in  
18 all aspects of this litigation including providing factual information relating to Plaintiff's and similarly  
19 situated employees' employment conditions, providing a substantial number of documents, and  
20 answering questions regarding Defendant's factual contentions in this matter. This was important  
21 because it directly related to our ability to maintain this case as a class action and our ability to obtain a  
22 favorable settlement for the class.

23         8. Throughout this litigation our office had numerous communications with Defendant's  
24 Counsel discussing our respective positions. The parties engaged in mediation on May 25, 2021 using  
25 an experienced mediator, Hon. Ronald M. Sabraw (Ret.). It was only after approximately seven months  
26 of extensive, arm's length negotiations that the parties were able to reach a settlement, which only  
27 occurred after a full-day mediation. The negotiations were at all times contentious and adversarial,  
28 though still professional in nature.

1           9.       The parties reviewed and analyzed substantial amounts of data regarding the class  
2 claims. Based on our analysis and review of all relevant documents and Class Member information, I  
3 have determined that the maximum damages for the asserted class claims is approximately  
4 \$1,834,124.73, which includes civil penalties under the PAGA. The likely exposure for PAGA  
5 penalties is approximately \$1,019,466.50, based on the counts alleged to the LWDA and the class data.  
6 Based on our research, we did not find any prior Labor Commissioner or court decisions that stated  
7 Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be  
8 found for penalty calculation purposes and the exposure analysis here is based on an "initial violation"  
9 valuation being adopted by any fact finder if this matter went to trial.

10           10.     I believe the PAGA penalties in this case may be reduced however due to the fact that  
11 the penalties would be in addition to amounts owed for substantive violations and much of the penalties  
12 are based on violations due to technical non-compliance with the Labor Code. Furthermore,  
13 Defendants produced a substantial number of documents that a Court may find demonstrates a good  
14 faith attempt at compliance that merits the reduction of civil penalties. Courts regularly cut civil  
15 penalties on PAGA claims where statutory penalties for the same violations are assessed as well. The  
16 statutorily authorized discretion that Courts have used to reduce penalties ranges substantially. *See*  
17 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);  
18 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, \*9 (C.D. Cal. 2011) (82% reduction).  
19 Thus, civil penalties may be cut to approximately \$183,503.97 (82% reduction) or lower given the  
20 derivative recovery. Taking this into account, the likely recovery if Plaintiff was successful at trial on  
21 proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties  
22 would be approximately \$998,162.20. Taking this into account, Plaintiff's 240,000 gross recovery  
23 under the Agreement represents approximately 24% of the maximum likely value in this matter. After  
24 deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs,  
25 any Enhancement Payment to the Class Representative, Claims Administrator Costs, employer taxes,  
26 and the 75% portion of the PAGA Payment to the LWDA, the net recovery under the Agreement of  
27 \$122,290.48 represents approximately 12.3% of the maximum likely value in this matter. Based on the  
28 final numbers from the administrator, the average recovery for class members is approximately

1 \$1,825.23 and the highest recovery is approximately \$2,641.23. I believe the Agreement represents a  
2 reasonable compromise of claims based on the legal and factual disputes in this case. The ability to  
3 secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than  
4 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this  
5 Agreement.

6 11. I am a shareholder at Shimoda Law Corp. In agreeing to represent Plaintiff and take on  
7 the case for all Class Members, I agreed to take this case on a contingency basis, meaning that I would  
8 take a percentage of any settlement or judgment should we recover a monetary amount. I took a risk  
9 that we would not recover any money in this matter if we were unsuccessful at trial. I also took on the  
10 risk that the case may not be certified as a class action and/or be subject to an unfavorable summary  
11 judgment ruling. However, I believe it is important to make sure employees are able to find affordable  
12 representation in order to ensure that employers are complying with all their legal obligations towards  
13 employees and paying employees all their hard-earned wages.

14 12. My law firm is a boutique law practice that focuses primarily in employment litigation,  
15 emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a  
16 Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the  
17 Philosophy program. I was one of only two recipients of this award out of the entire Philosophy  
18 Department. After U.C. Davis, I attended the University of the Pacific, McGeorge School of Law,  
19 graduating in 2011 and receiving a Juris Doctorate. I graduated in the top 20% of my class and was a  
20 member of the Traynor Honor Society at McGeorge. Other academic achievements of mine include  
21 receiving a Witkin Award (top grade) in my legal research and writing course, a Witkin Award in  
22 complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative  
23 Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for  
24 the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being  
25 selected as a Sacramento County Bar Association Diversity Fellow in 2009. I was also a member of  
26 the Employment and Labor Law Society and an officer for the Latino Law Students Association from  
27 2009 to 2010.

28 //

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

- 13           • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 14           • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 15           • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 16           • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup.  
17 Ct.);
- 18           • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-  
19 0012080 (San Joaquin Sup. Ct.);
- 20           • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 21           • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 22           • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.  
23 Sup. Ct.);
- 24           • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.  
25 Ct.);
- 26           • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 27           • *Bershell v. Dignity Health Methodist Hospital Sacramento, et al.*, Case No. 34-2017-  
28 0222269 (Sac. Sup. Ct.);

- 1 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-  
2 00271174 (Sac. Sup. Ct.);
- 3 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.  
4 Ct.);
- 5 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac.  
6 Sup. Ct.);
- 7 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880  
8 (Sac. Sup. Ct.);
- 9 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 10 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.  
11 Ct.);
- 12 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 13 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-  
14 00209613 (Sac. Sup. Ct.);
- 15 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 16 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-  
17 2017-00222101 (Sac. Sup. Ct.);
- 18 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 19 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup.  
20 Ct.);
- 21 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 22 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 23 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup.  
24 Ct.);
- 25 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac.  
26 Sup. Ct.);
- 27 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 28 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);

- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

15. My partner, Galen T. Shimoda, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance

1 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –  
2 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento  
3 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of  
4 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and  
5 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -  
6 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);  
7 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a  
8 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,  
9 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized  
10 as a Super Lawyer from 2014 to present.

11 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in  
12 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.  
13 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &  
14 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is  
15 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and  
16 Federal Courts, including up to certification, settlement, preliminary and final approval, and  
17 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.  
18 Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel  
19 include the following:

- 20 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 21 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 22 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 23 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 24 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 25 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 26 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 27 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 28 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.

- Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
  - *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
  - *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
  - *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
  - *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
  - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
  - *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
  - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
  - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
  - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
  - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
  - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
  - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
  - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
  - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
  - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
  - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
  - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
  - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);

- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

18. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. I agreed to take this case on a contingency and as a class action with the possibility that I would not receive any compensation for my time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five percent (35%) fee request is within the accepted ranges and eminently reasonable in light of the results obtained for the putative class, which is an average net payout of \$1,825.23 and a high net payout of \$2,641.23. In my experience with contingency cases in employment law cases, the typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own firm and working with several other firms has been that the typical percentage negotiated between parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed several recent Federal District Court Cases where the Court has approved common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District,

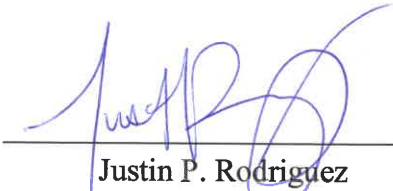
1 Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-  
2 00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695,  
3 which are cited in Plaintiff's Memorandum of Points and Authorities. I believe my request of 84,000  
4 (approximately 35%) for attorneys' fees is justified given the results obtained on behalf of the class.  
5 Moreover, at this time, my firm has advanced all costs for Plaintiff and Class Members and has not  
6 received any compensation whatsoever for our time expended in this case. The expected costs through  
7 final approval are \$9,915.33. Attached as Exhibit D is a true and correct copy of the costs incurred  
8 prior to the filing of this Motion and the expected costs incurred through the final approval and fairness  
9 hearing. The difference in the actual costs and the \$12,500 allocated under the Agreement will be  
10 added to the Net Settlement Amount.

11 19. I have used several class action administrator companies in the wage and hour class  
12 actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer  
13 the proposed class settlement. Under the settlement, the different between the originally allocated  
14 \$5,000 and the actual administration costs of \$3,500 will be paid to the putative class on a pro rata basis.  
15 A true and correct copy of a cost estimate provided by Simpluris, Inc. is filed with this Motion as  
16 Exhibit D.

17 20. A copy of the Agreement and this Motion were submitted to the LWDA for review at the  
18 same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(1)(2).  
19 A true and correct copy of documents demonstrating the settlement documents were provided to the  
20 LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit E.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
22 true and correct. Executed this 6th day of January 2022 in Elk Grove, California.

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28



Justin P. Rodriguez

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

6 Attorneys for Plaintiff JOSE MAYORGA  
individually and on behalf of similarly situated employees  
7  
8

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN JOAQUIN**

11 JOSE MAYORGA, individually and on behalf  
of all other similarly situated employees,

12 Plaintiff,

13 vs.

14 BROWN STRAUSS, INC., a Delaware  
15 Corporation; and DOES 1 to 100, inclusive,

16 Defendants.  
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**Case No. STK-CV-UOE-2020-0010906**

**CLASS ACTION**

**DECLARATION OF NORMAN  
ALCANTARA REGARDING NOTICE AND  
SETTLEMENT ADMINISTRATION**

Date: February 8, 2022

Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara Kronlund

Filed: December 28, 2020

FAC Filed: April 5, 2021

Trial Date: None Set

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1           11.     The Net Settlement Fund of \$122,290.48 available to pay Class Members was determined  
2 by subtracting Class Counsel's Fees (\$84,000.00), Class Counsel's Costs Payment (\$9,915.33), Named  
3 Plaintiff Service Award (\$5,000.00), the PAGA LWDA Payment (\$7,500.00), the Employer Taxes  
4 (\$7,794.19) and the Administration Costs (\$3,500.00) from the Maximum Settlement Amount  
5 (\$240,000.00).

6           12.     As of this date, \$122,290.48 of the Net Settlement Fund will be disbursed to the Class  
7 Members. The *average estimated payment* is \$1,825.23 and the *highest estimated payment* is \$2,641.23.

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

9           13.     As of this date, Simpluris has not received any Requests for Exclusion from Class  
10 Members.

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

13           15.     As of this date, Simpluris has not received any Disputes of Work Weeks from Class  
14 Members.

15                   **ADMINISTRATION COSTS**

16           16.     Simpluris' total costs for services in connection with the administration of this Settlement,  
17 including fees incurred and anticipated future costs for completion of the administration, are \$3,500.00.  
18 Simpluris' work in connection with this matter will continue with the calculation of the settlement checks,  
19 issuance and mailing of those settlement checks, etc., and to do the necessary tax reporting on such  
20 payments.

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22           I declare under penalty of perjury under the laws of the State of California that the foregoing is  
23 true and correct. Executed this 6th day of January, 2022, in Costa Mesa, California.

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27                   Norman Alcantara  
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# **EXHIBIT A**

CALIFORNIA SUPERIOR COURT  
FOR THE COUNTY OF SAN JOAQUIN

**ATTENTION:** All non-exempt employees who have or continue to work for Brown Strauss, Inc. in California from December 28, 2016 to September 10, 2021 (the "Class Members").

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

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«Address1» «Address2»

«City», «State» «Zip»-«ZipDPC3»

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«BarcodeString»

JOSE MAYORGA, individually and on behalf  
of all other similarly situated employees,

Plaintiff,

vs.

BROWN STRAUSS, INC., a Delaware  
Corporation; and DOES 1 to 100, inclusive,

Defendant.

Case No. **STK-CV-UOE-2020-0010906**

**CLASS ACTION**

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

Pursuant to an order from the San Joaquin County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on September 21, 2021, you are receiving notice of a proposed class action settlement between Plaintiff Jose Mayorga ("Plaintiff" or "Class Representative"), and Defendant Brown Strauss, Inc. ("Defendant") on behalf of Class Members as defined above. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked «MERGED\_WW\_CALC» workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be \$«MERGED\_EstSettAmnt\_CALC». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

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

**I. BACKGROUND OF THE CASE**

On December 28, 2020, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of San Joaquin on behalf of himself and Class Members. The First Amended Complaint was filed April 5, 2021. The term "Action" means this putative class action pending in the Superior Court of California for the County of San Joaquin, Case No. STK-CV-UOE-2020-0010906. The Class Period is December 28, 2016, to September 10, 2021 (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendant violated California law by failing to pay overtime, failing to provide meal periods, failing to provide rest periods, failing to pay final wages, committing wage statement violations, failing to maintain accurate records, failing to provide paid sick leave, violating Labor Code section 558, and failing to pay accrued and unused vacation. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has

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

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

## **II. SUMMARY OF THE PROPOSED SETTLEMENT**

### **A. The Amount of the Settlement**

Under the terms of the Agreement, Defendant agrees to pay a total sum of Two Hundred Forty Thousand Dollars and No Cents (\$240,000.00) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$84,000.00, attorneys' costs not to exceed \$12,500.00, Claims Administrator Costs estimated not to exceed \$5,000.00, Class Representative's Enhancement Payment of \$5,000.00, any employer side taxes attributable to payments allocated as wages, and \$10,000.00 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000.00 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all non-exempt employees who have or continue to work for Defendant in California from December 23, 2019 to September 10, 2021.

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

### **B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees**

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

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

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

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendant's records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than December 10,

Page 2 of 4

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

Questions? Call: 888-369-3780

2021. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

**D. Release of Claims**

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

Class members who do not opt out will be deemed to have released all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period.

Aggrieved Employees will be deemed to have released all claims that were brought under the Private Attorneys General Act, Labor Code § 2698 et seq., based on the facts or claims alleged in the Action during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

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

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

**E. Attorneys' Fees and Costs**

Defendant has agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$84,000.00, and attorneys' costs not to exceed \$12,500.00. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

**F. Reasonableness of Settlement**

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

**III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER**

**A. Participating in the Settlement**

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

**B. Excluding Yourself from the Settlement**

If you do not wish to participate in the settlement, you may be excluded (i.e., "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (i.e. Mayorga v. Brown Strauss, Inc., STK-CV-UOE-2020-0010906); (d) be signed; and (e) be post-marked no later than December 10, 2021. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

Mayorga v. Brown Strauss  
P.O. Box 26170  
Santa Ana, CA 92799

The request to opt out must be postmarked no later than December 10, 2021. If you submit a request to opt out which is not postmarked by December 10, 2021, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

**C. Objection to Settlement**

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your

objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. Mayorga v. Brown Strauss, Inc., STK-CV-UOE-2020-0010906) (e) be signed; and (f) be post-marked no later than December 10, 2021. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

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

#### **IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS**

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

#### **V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing in Department 10D, at 180 E Weber Ave Stockton CA 95202, on February 8, 2022 at 9:00 a.m., to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

#### **VI. ADDITIONAL INFORMATION**

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

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

Brandon R. McKelvey  
Timothy B. Nelson  
Douglas R. Leach  
Medina McKelvey LLP  
925 Highland Pointe Drive, Suite 300  
Roseville, CA 95678  
Telephone: (916) 960-2211  
Facsimile: (916) 742-5488  
*On behalf of Defendant*

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL 888-369-3780.**

**BY ORDER OF THE COURT**

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

6 Attorneys for Plaintiff JOSE MAYORGA  
individually and on behalf of similarly situated employees  
7  
8

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN JOAQUIN**

11 JOSE MAYORGA, individually and on behalf  
of all other similarly situated employees,

12 Plaintiff,

13 vs.  
14

15 BROWN STRAUSS, INC., a Delaware  
Corporation; and DOES 1 to 100, inclusive,

16 Defendant.  
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**Case No. STK-CV-UOE-2020-0010906**

**CLASS ACTION**

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

Date: February 8, 2022

Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara Kronlund

Filed: December 28, 2020

FAC Filed: April 5, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above  
3 referenced case came before this Court on the date and time referenced above in Department 10D  
4 before Hon. Barbara Kronlund, presiding. Named Plaintiff Jose Mayorga ("Plaintiff") filed this  
5 putative class action on December 28, 2020. The First Amended Complaint was filed April 5, 2021.  
6 The operative Complaint alleges that Defendant Brown Strauss, Inc., ("Defendant") failed to pay  
7 overtime wages, failed to provide meal periods, failed to provide rest periods, failed to provide  
8 accurate wage statements, failed to pay final wages, engaged in unfair competition, and failed to pay  
9 accrued vacation. Plaintiff has also alleged Defendant is liable for civil penalties under the Private  
10 Attorneys General Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs  
11 as part of this Action. Defendant denied all of Plaintiff's claims and denied that this case was  
12 appropriate for class treatment. No class has been certified. The class and PAGA settlement was  
13 preliminarily approved by this Court on September 21, 2021.

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

21 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**  
22 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

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

25 All non-exempt employees who have or continue to work for Defendant in  
26 California from December 28, 2016 up to September 10, 2021.

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

1 The Court finds that Class Members meet the ascertainability and numerosity requirements since  
2 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within  
3 the definition and the number of Class Members would make joinder impractical. The commonality and  
4 predominance requirements are met for settlement purposes since there are questions of law and fact  
5 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's  
6 contentions that Defendant caused the violations outlined above by failing to incorporate the value of  
7 nondiscretionary wages into Plaintiff's and similarly situated employees' regular rates of pay for the  
8 purpose of calculating overtime, sick time, and other premium pay. The PAGA, waiting time penalty,  
9 wage statement violation, and unfair competition claims also derive from these violations.  
10 Additionally, Class Members seek the same remedies under state law. The typicality requirement for  
11 settlement purposes is also satisfied since the claims of the Class Representative is based on the same  
12 facts and legal theories as those applicable to the class members.

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

16 The Court finds that Plaintiff Jose Mayorga and Plaintiff's counsel, Galen T. Shimoda  
17 and Justin P. Rodriguez of the Shimoda Law Corp., to be adequate representatives of the settlement  
18 class. The Court appoints them as class representative and class counsel, respectively.

## 19 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

20 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit  
21 A. The Court finds that final approval is warranted as the Agreement falls within the range of  
22 reasonableness and is fair, reasonable, and adequate for the class. The Court also acknowledges that  
23 Class Members were able to object to the settlement through the administration process and at a fairness  
24 hearing. No such objections were made by the class members and no class members opted out of the  
25 settlement.

26 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive  
27 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court  
28

1 gives final approval to the Agreement and all terms therein as if stated here in full, including the  
2 \$240,000.00 Gross Settlement Amount.

3 The Court orders that Plaintiff Jose Mayorga will receive \$5,000.00 as a Class Representative  
4 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro  
5 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

6 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.  
7 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed  
8 \$3,500. The difference between the actual cost of the Claims Administrator and the originally allocated  
9 \$5,000 will be redistributed to Qualified Claimants on a pro-rata basis.

10 The Court finds that an award of fees under the common fund doctrine is appropriate in this case  
11 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be  
12 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on  
13 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request  
14 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*  
15 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*  
16 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of  
17 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, \$84,000, to be appropriate compensation  
18 for Class Counsel. The attorneys' fees request is within the range that has been approved by other  
19 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and  
20 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over  
21 the course of this case, which included potential loss at summary judgment, certification, and/or trial  
22 proceedings. Additionally, the Court orders that \$9,915.33 of the settlement proceeds will be paid to  
23 Class Counsel for reasonable costs incurred in this case. The difference between the actual costs  
24 incurred and the originally allocated \$12,500.00 shall be paid to the Qualified Claimants on a pro-rata  
25 basis.

26 The Court approves of the Ten Thousand Dollars and No Cents (\$10,000.00) PAGA Payment,  
27 which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount,  
28 to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to

1 the Labor and Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid  
2 to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also finds that the  
3 Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-  
4 compliance, furthering the purpose of the Labor Code and LWDA.

5 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to  
6 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be  
7 paid out 50/50 to Capital Pro Bono, Inc. and the Center for Workers’ Rights.

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

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

13 The Court finds that the Notice of Settlement, which was submitted with Plaintiff’s Motion as  
14 Exhibit A to the Declaration of Normal Alcantara, fairly and adequately advised Class Members of the  
15 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number  
16 of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how  
17 to participate in the settlement, how to file documentation in opposition to the proposed settlement, and  
18 when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and  
19 distribution of such notice by first class mail to each identified Class Member at his or her most recent  
20 address based on a National Change of Address database search from the Class Members’ last known  
21 address and a skip trace on any Class Members who have the Notice of Settlement returned as  
22 “undeliverable” or “not at this address” comported with all constitutional requirements, including those  
23 of due process.

24 **4. IMPLEMENTATION SCHEDULE**

25 Accordingly, with good cause shown, the Court hereby approves and orders that the following  
26 implementation schedule be adhered to:  
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|                                                                                                                                                                                                                                                                              |                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel | Within 7 days after the Final Approval Date                                    |
| Last day for Defendant to fund settlement                                                                                                                                                                                                                                    | Within 21 calendar days after Final Approval Date                              |
| Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees                                        | The Effective Date                                                             |
| Last day for Qualified Members and Aggrieved Employees to cash settlement checks                                                                                                                                                                                             | 120 days after issuance of checks to Qualified Members and Aggrieved Employees |
| Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries                                                                                                                                                             | Within 14 days after settlement check cashing deadline                         |
| Last day for Claims Administrator to provide Parties with compliance declaration                                                                                                                                                                                             | Within 21 days after settlement check cashing deadline                         |

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

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Judge of the Superior Court

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

6 Attorneys for Plaintiff JOSE MAYORGA  
individually and on behalf of similarly situated employees  
7

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN JOAQUIN**

10 JOSE MAYORGA, individually and on behalf  
11 of all other similarly situated employees,

12 Plaintiff,

13 vs.

14 BROWN STRAUSS, INC., a Delaware  
Corporation; and DOES 1 to 100, inclusive,

15 Defendant.  
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**Case No. STK-CV-UOE-2020-0010906**

**CLASS ACTION**

**PROOF OF SERVICE**

Date: February 8, 2022

Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara Kronlund

Filed: December 28, 2020

FAC Filed: April 5, 2021

Trial Date: None Set

1 *Mayorga v. Brown Strauss, Inc.*  
2 *San Joaquin County Superior Court of California STK-CV-UOE-2020-10906*

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

5 I, Erika F. Collazo, declare that:

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

8 On January 7, 2022, I served the following documents on the party below:

- 9 • PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL
- 10 APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 11 • MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF
- 12 PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION
- 13 AND PAGA SETTLEMENT
- 14 • EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION
- 15 FOR FINAL APPROVAL OF CLASS ACTION AND PAGA
- 16 SETTLEMENT
- 17 • DECLARATION OF JUSTIN P. RODRIGUEZ IN SUPPORT OF
- 18 PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION
- 19 AND PAGA SETTLEMENT
- 20 • DECLARATION OF NORMAN ALCANTARA REGARDING NOTICE
- 21 AND SETTLEMENT ADMINISTRATION
- 22 • [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL
- 23 APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

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| Brandon R. McKelvey (SBN 217002)<br>Timothy B. Nelson (SBN 235279)<br>Douglas R. Leach (SBN 325955)<br><b>MEDINA McKELVEY LLP</b><br>925 Highland Pointe Drive, Suite 300<br>Roseville, California 95678<br>Telephone: (916) 960-2211<br>Facsimile: (916) 742-5488<br>Email: <a href="mailto:Brandon@medinamckelvey.com">Brandon@medinamckelvey.com</a><br><a href="mailto:Tim@medinamckelvey.com">Tim@medinamckelvey.com</a><br><a href="mailto:doug@medinamckelvey.com">doug@medinamckelvey.com</a><br><a href="mailto:Samantha@medinamckelvey.com">Samantha@medinamckelvey.com</a><br><a href="mailto:Andrew@medinamckelvey.com">Andrew@medinamckelvey.com</a><br><a href="mailto:Jenelle@medinamckelvey.com">Jenelle@medinamckelvey.com</a> |
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25 [ ] [By Mail] I am familiar with my employer's practice for the collection and  
26 processing of correspondence for mailing with the United States Postal  
27 Service and that each day's mail is deposited with the United States Postal  
28 Service that same day in the ordinary course of business. On the date set forth  
above, I served the aforementioned document(s) on the parties in said action  
by placing a true copy thereof enclosed in a sealed envelope with postage  
thereon fully prepaid, for collection and mailing on this date, following

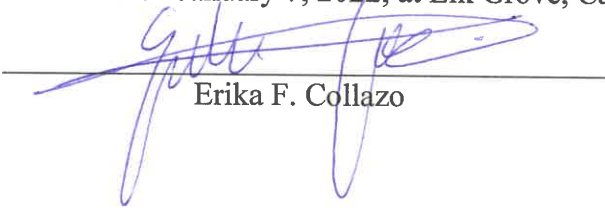
ordinary business practices, at Elk Grove, California, addressed as set forth above.

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 7, 2022, at Elk Grove, California.

  
Erika F. Collazo