Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Selena Matavosian (SBN 348044)
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*Attorneys for* Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

VERONICA BERNAL, individually, and on behalf of other members of the general public similarly situated; KAILIE FAGEN, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

vs.

A&E FAGEN, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: BC712866

Honorable Kenneth R. Freeman
Department SSC14

**CLASS ACTION**

**DECLARATION OF SELENA MATAVOSIAN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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

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|---|---|
| Date: | September 12, 2023 |
| Time: | 11:00 a.m. |
| Department: | SSC14 |
| Complaint Filed: | July 5, 2018 |
| FAC Filed: | May 19, 2022 |
| Trial Date: | None Set |



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## DECLARATION OF SELENA MATAVOSIAN

I, Selena Matavosian, hereby declare as follows:

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

### EXPERIENCE AND ADEQUACY OF LAWYERS *for* JUSTICE, PC

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

3. Edwin Aiwazian is the Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, he has previously served as a pro bono mediator for the Los Angeles County Superior

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

4. Arby Aiwazian is a Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from University of California, Los Angeles and graduated magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School.

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From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District. From approximately August 2008 to approximately December 2008 he served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit. He was admitted to practice law in California in 2010. He is admitted to practice before all courts of the State of California and all United States District Courts in the State of California. He has worked on many wage-and-hour class action and representative action cases, taking the lead in taking and defending depositions, arguing motions, and attending mediations. He has played an integral role in preparing matters for class certification, including and not limited to, successful certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court Case No. BC424012), *Montazemi v. Regus Management* (Los Angeles County Superior Court Case No. BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case No. RG13680477). He has worked on over one hundred (100) class action or representative action cases which have resulted in settlement, including and not limited to those listed in paragraph 7 herein.

5. Joanna Ghosh is a Senior Member of Lawyers *for* Justice, PC. She received a Bachelor of Arts degree from California State University, Los Angeles in 2006, a Master of Science degree from the London School of Economics in 2007, and a Juris Doctor degree from Georgetown University Law Center in 2010. She is admitted to practice in California (since 2010) and in New York (since 2013) and is also admitted to practice in all U.S. District Courts in California, the U.S. Bankruptcy Court for the Central District of California, and the U.S. Supreme Court. She has taken and defended dozens of depositions and successfully handled motion practice in class action cases regarding discovery (including and not limited to, regarding class contact information), class certification (both contested class certification and stipulated class certification), arbitration agreements, coordination, intervention. She has successfully handled briefing and oral argument on appeal and obtained notable decisions regarding the Private Attorneys General Act and employer efforts to compel arbitration of PAGA claims, e.g., *Roberto Betancourt v. Prudential Overall Supply* (Cal., May 24, 2017) 9 Cal.App.5th 439 (Cal. Ct. App.,

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Mar. 7, 2017), cert. denied, cert. denied (U.S., Dec. 11, 2017) and *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th175. She also has extensive experience with class action and/or representative action settlements. Under her, Edwin Aiwazian, and Arby Aiwazian's supervision, the firm has handled the class certification and court approval process for hundreds of class action and/or representative action matters that have successfully resolved. She is a member of the California Employment Lawyers Association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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nn) LFJ represents the plaintiffs in a wage-and-hour class action against a manufacturer and distributor of commercial dish and glass cleaning machines and supplies for the restaurant and hospitality industries, on behalf of hourly-paid or non-exempt employees. On July 13, 2023, the court granted the plaintiffs' motion for class certification and certified a class. The Los Angeles County Superior Court Case Number is BC707670.

**BASIC INFORMATION ABOUT THE CASE AND REACHING THE SETTLEMENT**

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

9. Based on information provided by Defendant, as of January 6, 2023, the Class is estimated to consist of approximately one hundred and nine (109) individuals.

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

11. On February 10, 2022, Plaintiff provided written to the California Labor and Workforce Development Agency ("LWDA") by online submission and to Defendant by Certified Mail, of the specific provisions of the California Labor Code that Defendant is alleged to have violated. A true and correct copy of the notice is attached hereto as "**EXHIBIT 2**."

12. Since the above-captioned action was commenced, Plaintiff's Counsel has litigated the case for several years and was actively preparing the matter for class certification and trial.

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Counsel for the Parties have engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Lynn S. Frank, Esq. (the "Mediator"), a well-respected mediator experienced in mediating complex labor and employment matters. In the course of mediation and settlement discussions, counsel for the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, Defendant's financial condition, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things. During all settlement discussions, both sides conducted their negotiations at arm's length in an adversarial position. Arriving at a settlement that was acceptable to both sides was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Plaintiff's Counsel believed that they would be able to obtain class certification and prevail at trial. After conducting extensive investigations, formal and informal discovery, exchange of information, and settlement negotiations, and with the aid of the Mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation. The Settlement is a fair, reasonable, and adequate resolution of the Released Class Claims of Plaintiff and Settlement Class Members and of the Released PAGA Claims of the State of California and PAGA Employees, against the Released Parties.

13. Prior to reaching the Settlement, Plaintiff's Counsel investigated the veracity, strength, and scope of the claims, and was preparing for class certification and trial. Plaintiff's Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data obtained from Defendant, Plaintiff, and other sources. Plaintiff's Counsel served multiple sets of formal written discovery requests onto Defendant (specifically, Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Form

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Interrogatories – General (Set One)) and noticed the depositions of Defendant's Person Most Knowledgeable designees, along with accompanying requests for production of documents, on Defendant and former defendant Whittier Grocery Outlet. The volume of data and documents that Plaintiff's Counsel reviewed and analyzed included and was not limited to: Plaintiff's and other Class Members' employment records, a detailed sampling of Class Members' time data and pay records, Defendant's Employee Handbook, Defendant's operations and employment practices, forms, procedures, and policies (including, but not limited to, Defendant's policies regarding Full-Time/Part-Time and Temporary Status, Paydays and Distribution of Paychecks, Hours of Work/Work Schedules, Breaks/Lunches, Overtime, Recording Time Worked, Attendance, Dress Code, and Lunch Room and Lockers), among other information and documents. Class Counsel interviewed Plaintiff and conducted investigations to gather information regarding the facts and circumstances surrounding Plaintiff's and putative class members' employment and to identify potential witnesses. Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, dismissal of former plaintiffs Veronica Bernal and Franchessca Alvarez-Reyes and former defendant Whittier Grocery Outlet, and the production of documents and data prior to the mediation. Class Counsel also drafted pleadings and the mediation brief and prepared for and attended court proceedings, mediation, and settlement negotiations, among other tasks.

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

15. The Settlement provides for a Total Settlement Amount of One Hundred Ninety-Two Five Hundred Dollars and Zero Cents ($192,500.00). The Net Settlement Amount is the Total Settlement Amount less the following amounts subject to approval by the Court: Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, and the PAGA Amount. Assuming that the amounts

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allocated under the Settlement toward these payments are awarded by the Court, the Net Settlement Amount that will be available for distribution to Settlement Class Members is currently estimated to be Eighty-Two Thousand Six Hundred Twenty-Five Dollars and Zero Cents ($82,625.00). Additionally, 75% of the PAGA Amount (i.e., the LWDA Payment), which is $7,500.00 out of $10,000.00, will be distributed to the LWDA and 25% of the PAGA Amount (i.e., the PAGA Employee Amount), which is $2,500.00 out of $10,000.00, will be distributed to PAGA Employees. The Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA Employees, in accordance with the terms of the Settlement, and there is no reversion to Defendant.

16. The Parties have agreed to retain Phoenix Settlement Administrators ("Settlement Administrator" or "Phoenix") to handle the notice and settlement administration process. The Parties respectfully request that the Court appoint Phoenix to handle these procedures and serve as the Settlement Administrator. Defendant will provide the Settlement Administrator with a list of Class Members that Defendant will diligently and in good faith compile from its records, which will include each Class Member's full name, last known mailing address, Social Security Number, start and end dates of employment as hourly-paid or non-exempt employees of Defendant in California during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks ("Class List"). The Settlement Administrator will calculate each Class Member's estimated share of the Net Settlement Amount ("Individual Settlement Share") and estimated share of the PAGA Employee Amount ("Individual PAGA Payment"). The Settlement Administrator will also receive Requests for Exclusions, Notices of Objections, and disputes regarding Workweeks and/or PAGA Workweeks; provide necessary reports and declarations; calculate, subtract, and transmit necessary taxes and withholdings; prepare and submit informational and other tax filings and documents; issue and transmit all payments provided for by the Settlement, including and not limited to, mailing payments to Settlement Class Members and PAGA Employees; and perform any other usual and customary duties for administering a class action settlement. Settlement Administration Costs are currently estimated not to exceed Nine Thousand Dollars and Zero Cents ($9,000.00) and will be

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paid out of the Total Settlement Amount, subject to approval of the Court.

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

18. Plaintiff's Counsel is aware of the defenses and position of Defendant but believes that Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff's Counsel has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class certification and/or representative adjudication. Plaintiff's Counsel further recognizes the burdens of proof necessary to establish liability for the claims asserted in the lawsuit, Defendant's defenses, and the difficulties in establishing entitlement to monetary recovery. Plaintiff's Counsel has also considered the settlement discussions, as well as the evaluations of the mediator, who is

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experienced and well-regarded in complex labor and employment matters.

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

20. The Settlement Agreement provides for Plaintiff's Counsel to apply for attorneys' fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., $67,375.00) and expenses and costs in an amount not to exceed Sixteen Thousand Dollars and Zero Cents ($16,000.00), which will be paid out of the Total Settlement Amount, subject to approval by the Court. It should be noted that Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.

21. The Settlement Agreement provides for payment of up to Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Plaintiff as an Enhancement Payment, to be paid out of the Total Settlement Amount subject to approval by the Court. Plaintiff spent considerable time and effort to produce relevant documents and past employment records and to provide the facts and evidence necessary to attempt to prove the allegations. Plaintiff was available whenever

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Plaintiff's Counsel needed Plaintiff, and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims. Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment, in addition to an Individual Settlement Payment and Individual PAGA Payment, for services performed in the matter on behalf of the Class, State of California, and PAGA Employees.

**FEE SPLIT ARRANGEMENT**

22. Lawyers *for* Justice, PC has not entered into a fee splitting agreement or arrangement with any other counsel.

**RELATION TO PROPOSED *CY PRES* RECIPIENT**

23. I made reasonable inquiry of Plaintiff and other members at Lawyers *for* Justice, PC and to the best of my knowledge, neither I, Plaintiff, nor other members at Lawyers *for* Justice, PC, have any relationship with the proposed *cy pres* recipient Capital Pro Bono – Employment Law Clinic.

24. Plaintiff's Counsel submits that the Settlement is fair, reasonable, and adequate, and is in the best interests of Plaintiff, the Class, PAGA Employees, and the State of California. Plaintiff's Counsel further submits that the Settlement is within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case, the inherent costs and risks of further litigation, and the costs and risks associated with class certification, representative adjudication, trial, and/or appeals.

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

Executed on this 16th day of August 2023, at Glendale, California.

Selena Matavosian

**LAWYERS *for* JUSTICE, PC**
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# EXHIBIT 1

# JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement" or "Settlement Agreement") is made and entered into by and between Plaintiff Kailie Fagen ("Plaintiff" or "Class Representative"), individually, on behalf of all others similarly situated and on behalf of the State of California with respect to aggrieved employees, and Defendant A&E Fagen, Inc. ("Defendant") (collectively with Plaintiff, the "Parties").

This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as defined herein), the State of California as to the employment of PAGA Employees (as defined herein), PAGA Employees, and on Defendant, subject to the terms and conditions hereof and the approval of the Court.

## RECITALS

1. On July 5, 2018, former plaintiffs Veronica Bernal and Franchessca Alvarez-Reyes filed a Class Action Complaint for Damages against former defendant Whittier Grocery Outlet and Defendant in the Superior Court of California for the County of Los Angeles, thereby commencing the action entitled *Veronica Bernal, et al. v. Whittier Grocery Outlet, et al.*, Case No. BC712866 ("Action"). On November 12, 2019, the Court entered an Order dismissing defendant Whittier Grocery Outlet without prejudice from the Action. On January 11, 2021, the Court entered an Order dismissing former plaintiff Franchessca Alvarez-Reyes and her individual claims without prejudice from the Action. On January 26, 2021, former plaintiff Veronica Bernal provided written notice to the Labor and Workforce Development Agency by online submission and to Defendant by Certified Mail, of the specific provisions of the California Labor Code that she alleged Defendant violated. It was subsequently discovered that former plaintiff Veronica Bernal had passed away unexpectedly and, on or about June 4, 2021, by way of a Non-Appearance Case Review Report, the Court was informed of that fact. Thereafter, on February 10, 2022, Plaintiff provided written notice to the Labor and Workforce Development Agency by online submission and to Defendant by Certified Mail, of the specific provisions of the California Labor Code that she alleged Defendant violated ("PAGA Letter"). On May 17, 2022, the Court granted leave for the filing of a first amended complaint in the Action, adding Kailie Fagen as a named plaintiff and a cause of action under the Private Attorneys General Act, to implement the settlement. On May 19, 2022 Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California

Labor Code § 2698, *Et Seq*. ("Operative Complaint") in the Action, which added Plaintiff and a cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698 *et seq*. ("PAGA"). The Operative Complaint alleges eleven (11) causes of action for alleged violations of the California Labor Code on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time since July 5, 2014, for Defendant's alleged failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premium payments in lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business expenses, for alleged violations of the California Business & Professions Code Section 17200, *et seq*. based on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on the aforementioned alleged California Labor Code violations. On August 31, 2022, the Court entered an Order dismissing plaintiff Veronica Bernal and her individual claims without prejudice from the Action.

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

3. Class Counsel in the Action diligently investigated the class and PAGA claims against Defendant, including any and all applicable defenses and the applicable law, and through formal and informal discovery methods, obtained and reviewed extensive information, data, and documents to assess the claims and allegations.

4. On July 30, 2020, counsel for the Parties participated in mediation with Lynn Frank, Esq. (the "Mediator"), a respected mediator of complex wage and hour actions. With the assistance of the Mediator's evaluations, the Parties reached the settlement that is memorialized herein, and entered into a Memorandum of Understanding on December 18, 2020. The settlement discussions were conducted at arm's-length, and the Settlement is the result of an informed and detailed analysis of Defendant's potential liability and exposure in relation to the costs and risks associated with continued litigation.

Based on the documents produced, as well as Class Counsel's own independent investigation and evaluation, Class Counsel believes that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members, State of California, and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and Defendant's financial circumstances.

5. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions. Plaintiff further agrees that this Agreement cannot be used as evidence, nor can it be referred to or relied upon, in any arbitration, administrative, court, or legal proceeding (other than to seek preliminary and final Court approval of this Agreement, enforce the terms of this Agreement, or as required by a valid court order). Defendant disclaims and denies any liability, obligation, or responsibility to Plaintiff whatsoever.

**DEFINITIONS**

6. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

a. "Attorneys' Fees and Costs" means attorneys' fees for Class Counsel's litigation and resolution of the Action and all actual costs incurred and to be incurred by Class Counsel in the Action, as set forth in Paragraph 10 below.

b. "Class Counsel" means Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Alexandra Rose of Lawyers *for* Justice, PC, who will seek to be appointed counsel for the Class.

c. "Class List" means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member's full name, last known mailing address, Social Security Number, start and end dates of employment as hourly-paid or non-exempt employees of Defendant in California during the Class

Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks (as defined below) and PAGA Workweeks (as defined below).

d. “Class Member(s)” or “Class” mean all current and former hourly-paid or non-exempt employees of Defendant within the State of California employed at any time during the Class Period.

e. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as “**Exhibit A.**”

f. “Class Period” means the time period from July 5, 2014, through Preliminary Approval.

g. “Class Representative” or “Plaintiff” means Kailie Fagen.

h. “Class Settlement” means the settlement and resolution of all Released Class Claims.

i. “Court” means the Superior Court of the State of California for the County of Los Angeles.

j. “Defendant” means A&E Fagen, Inc.

k. “Defendant’s Counsel” means Alden J. Parker and William R.H. Mosher of Fisher & Phillips LLP.

l. “Effective Date” means the date when all of the following events have occurred: (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant’s Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has been mailed to the Class Members, providing them with an opportunity to object to the terms of the Class Settlement or opt out of the Class Settlement; (4) the Court has held a Final Approval Hearing and entered a Final Approval Order and Judgment; (5) sixty-five calendar days have passed since the Court entered a Final Approval Order and Judgment; and (6) in the event there are objections to the Class Settlement filed prior to the Final Approval Hearing which are not later withdrawn or denied, the later of the following events: five business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed, or, if any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief.

m. "Employer Taxes" means the employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares, which shall be paid by Defendant in addition to the Total Settlement Amount.

n. "Enhancement Payment" means the amount to be paid to Plaintiff in recognition of her effort and work in prosecuting the Action on behalf of the Class Members and PAGA Employees, as set forth in Paragraph 11 below.

o. "Final Approval" means the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

p. "Final Approval Hearing" means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.

q. "Individual PAGA Payment" means the *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement, to be calculated in accordance with Paragraph 15.

r. "Individual Settlement Payment" means the net payment of each Settlement Class Member's Individual Settlement Share, after reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, as provided in Paragraph 25 below.

s. "Individual Settlement Share" means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement, to be calculated in accordance with Paragraph 14.

t. "LWDA Payment" means the amount of Seven Thousand Five Hundred Dollars ($7,500.00), i.e., 75% of the PAGA Amount, that the Parties have agreed to pay to the California Labor and Workforce Development Agency ("LWDA") for the PAGA Settlement, as set forth in Paragraph 13.

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u. “Net Settlement Amount” means the portion of the Total Settlement Amount that is available for distribution to Settlement Class Members, which is the Total Settlement Amount less the Court-approved Enhancement Payment, Settlement Administration Costs, PAGA Amount, and Attorneys’ Fees and Costs.

v. “Notice of Objection” means a Class Member’s written objection to the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the objector’s full name, signature, address, telephone number, and the last four (4) digits of his or her Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) include copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

w. “PAGA Amount” means the allocation of Ten Thousand Dollars ($10,000.00) from the Total Settlement Amount for the PAGA Settlement. Seventy-five percent (75%) of the PAGA Amount, or $7,500.00, will be paid to the LWDA (i.e., the LWDA Payment) and the remaining twenty-five percent (25%) or, $2,500.00, will be distributed to PAGA Employees based on their PAGA Workweeks (i.e., the PAGA Employee Amount).

x. “PAGA Employees” means all Class Members employed by Defendant at any time during the PAGA Period.

y. “PAGA Employee Amount” means the amount of Two Thousand Five Hundred Dollars ($2,500.00), i.e., 25% of the PAGA Amount, to be distributed to PAGA Employees on a *pro rata* basis based on their PAGA Workweeks.

z. “PAGA Period” means the time period from February 10, 2021, through Preliminary Approval.

aa. “PAGA Settlement” means the settlement and resolution of Released PAGA Claims.

bb. “PAGA Workweeks” means the number of Workweeks each PAGA Employee worked for Defendant during the PAGA Period.

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cc. “Parties” means Plaintiff and Defendant, collectively, and “Party” means either Plaintiff or Defendant.

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

ee. “Released Class Claims” means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, damages, or causes of action which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, under any federal, state or local law, and shall specifically include claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, reimburse necessary business-related expenses, unfair or unlawful business practices pursuant to California Business and Professions Code sections 17200, *et seq*. based on the aforementioned, and any violation of California Labor Code arising from or related to the aforementioned, including, violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and Industrial Welfare Commission Wage Orders.

ff. “Released PAGA Claims” means any and all claims arising from any of the factual allegations in the PAGA Letter and/or the Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, codified in California Labor Code section 2698, *et seq*., including for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and Industrial Welfare Commission Wage Orders.

gg. “Released Individual Claims” means any and all claims, demands, debts, duties, obligations, promises, liabilities, damages, accounts, payments, liens acts, costs, expenses, sums of money, suits, dues, actions or causes of action, both in law and in equity, whether known or unknown, matured or unmatured, suspected or unsuspected, which Plaintiff or her heirs, successors, assigns, attorneys, or agents ever had, now has, or may have in the future including, but not limited to, any claims made or which could have been made in the Action, any claims for failure to pay minimum wages, failure to pay overtime, failure to provide meal periods, failure to pay meal period premiums, failure to provide rest breaks, failure to provide rest break premiums, failure to reimburse business expenses, failure to provide accurate wage statements, failure to timely pay wages, failure to pay wages at separation, violations of the Fair Labor Standards Act, violations of the California Private Attorneys General Act, violations of the California Industrial Welfare Commission's ("IWC") Wage Orders, violations of California Labor Code sections 201, 202, 203, 204, 206, 210, 218.6, 226, 226.7, 246, *et seq.*, 351, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2698, *et seq.*, 2699, 2800, 2802, California Business and Professions Code section 17200, *et seq.*, and all claims for costs, attorney's fees, civil penalties, statutory penalties, premium pay, and liquidated damages related thereto.

hh. "Released Parties" means Defendant and its respective owners, agents, attorneys, insurers, past and present companies, divisions, affiliates, DBAs (if any), predecessors, successors, shareholders, officers, directors, managers, management employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by, through, under, or in concert with any of them.

ii. "Request for Exclusion" means a letter submitted by a Class Member indicating a request to be excluded from the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

jj. "Response Deadline" means the deadline by which Class Members must submit a Request for Exclusion, Notice of Objection, and/or dispute of the Workweeks and/or PAGA Workweeks credited to them, which shall be the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal

Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant's Counsel. Under no circumstances, however, will the Settlement Administrator have the authority to extend the Response Deadline. In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be the extended by fifteen (15) calendar days from the original deadline.

kk. "Settlement Administrator" means Phoenix Settlement Administrators, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for purposes of administering this Settlement. The Parties and their counsel each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

ll. "Settlement Administration Costs" means the costs payable from the Total Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this Settlement, as set forth in Paragraph 12 below.

mm. "Settlement Class Members" means all Class Members who do not submit a timely and valid Request for Exclusion.

nn. "Total Settlement Amount" means the amount of One Hundred Ninety-Two Thousand Five Hundred Dollars ($192,500.00) to be paid by Defendant in full resolution of the Action, Released Class Claims, Released PAGA Claims, and Released Individual Claims, which includes all Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, Net Settlement Amount to be paid to the Settlement Class Members, and Settlement Administration Costs. Defendant shall pay the Employer Taxes separately and in addition to the Total Settlement Amount. The Total Settlement Amount is subject to increase, as provided in Paragraph 39 below.

oo. "Workweeks" means the number of weeks each Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period, which will be calculated by the Settlement Administrator using each Class Member's start and dates of employment as reflected in the Class List. Each Class Member will be credited with at least one (1) Workweek.

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## **CLASS CERTIFICATION**

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

8. The Parties agree that certification for the purpose of settlement is not an admission that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be inappropriate in a non-settlement context.

## **TERMS OF AGREEMENT**

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

9. <u>Funding and Disbursement of the Total Settlement Amount</u>.

a. <u>Establishing the Qualified Settlement Account</u>. After Preliminary Approval, and prior to the Final Approval Hearing, the Settlement Administrator will establish a qualified settlement account for administration of the Settlement.

b. <u>Preliminary Disbursement Calculations</u>. Within fourteen (14) calendar days of Preliminary Approval, the Settlement Administrator will provide the Parties with a spreadsheet showing the Settlement Administrator's calculations for anticipated payments to Class Members, the allocation of Workweeks to Class Members, the allocation of PAGA Workweeks to the PAGA Employees, and any Employer Taxes to be paid by Defendant. The Administrator shall redact any identifying information and instead use an employee number to differentiate (except as to the named Plaintiff to the Action) in order to protect Class Members' and PAGA Employees' confidential information.

c. <u>Final Disbursement Calculations</u>. Within seven (7) calendar days of Final Approval, the Settlement Administrator shall provide the Parties with the final calculations of Individual Settlement Payments to the Settlement Class Members, the final calculations of Individual PAGA Payments to the PAGA Employees, and the amount of Employer Taxes to be paid by Defendant. The Settlement Administrator shall redact any identifying information and instead assign an employee value, except leaving the identifying information for the named Plaintiff, such that the Parties can review and approve the final distribution amounts to Settlement Class Members and PAGA Employees, which shall be made in accordance with the Court's Final Approval Order and Judgment.

d. <u>Funding the Total Settlement Amount</u>.

i. Within thirty (30) calendar days of Final Approval, Defendant will make a deposit of Sixty-Seven Thousand Five Hundred Dollars ($67,500.00) of the Total Settlement Amount, into the qualified settlement account established by the Settlement Administrator ("First Installment").

ii. Within six (6) months after the First Installment payment deadline, Defendant will make a deposit of Forty-Five Thousand Dollars ($45,000.00) of the Total Settlement Amount ("Second Installment").

iii. Within six (6) months after the Second Installment payment deadline, Defendant will make a deposit of Forty Thousand Dollars ($40,000.00) of the Total Settlement Amount, into the qualified settlement account established by the Settlement Administrator ("Third Installment").

iv. Within six (6) months after the Third Installment payment deadline, Defendant will make a deposit of Forty Thousand Dollars ($40,000.00) of the Total Settlement Amount, plus an amount sufficient to pay Employer Taxes, into the qualified settlement account established by the Settlement Administrator ("Fourth Installment").

v. To the extent that any payment due date set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

e. <u>Disbursement of Total Settlement Amount</u>.

i. Within seven (7) calendar days of the funding of the Fourth Installment, only upon approval by the Parties of the final distribution amounts, which shall be made in accordance with the Court's Final Approval Order and Judgment, the Settlement Administrator will issue the Individual Settlement Payments to

Settlement Class Members, the Individual PAGA Payments to PAGA Employees, the LWDA Payment to the LWDA, the Enhancement Payment to Plaintiff, the Attorneys' Fees and Costs to Class Counsel, and the Settlement Administration Costs to itself. The Settlement Administrator shall also set aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholdings, and timely forward these to the appropriate government authorities.

10. Attorneys' Fees and Costs. Class Counsel will request and Defendant will not oppose attorneys' fees of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., $67,375.00 if the Total Settlement Amount is $192,500.00) and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, in an amount not to exceed sixteen thousand dollars ($16,000.00), both of which will be paid from the Total Settlement Amount subject to Court approval. These amounts will cover any and all work performed and any and all costs incurred by Class Counsel in connection with the litigation of the Action, including without limitation all work performed and costs incurred to date, and all work to be performed and all costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. With respect to the Attorneys' Fees and Costs to Class Counsel, the Settlement Administrator may purchase an annuity to utilize United States Treasuries and bonds or utilize other attorney fee deferral vehicles, for Class Counsel, and any additional expenses for doing so shall be paid separately by Class Counsel and shall not be included within the Settlement Administration Costs. Any portion of the Attorneys' Fees and Costs not awarded to Class Counsel shall be a part of the Net Settlement Amount for the benefit of Settlement Class Members. The Court's ruling on the request for Attorneys' Fees and Costs shall not affect the enforceability of this Agreement or the terms contained herein.

11. Enhancement Payment. In recognition of her efforts and work in prosecuting the Action and in consideration of her agreement to release the Released Parties of the Released Individual Claims, Defendant agrees not to oppose or impede any application or motion for an Enhancement Payment in an

amount up to Seven Thousand Five Hundred Dollars ($7,500.00). The Enhancement Payment, which will be paid from the Total Settlement Amount, subject to Court approval, will be in addition to her Individual Settlement Payment as a Settlement Class Member and Individual PAGA Payment as a PAGA Employee. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff for the Enhancement Payment, and Plaintiff shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees to indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment. Should the Court approve the Enhancement Payment to Plaintiff in an amount that is less than that set forth above, the difference between the lesser amount approved by the Court and the amount allocated toward the Enhancement Payment will be part of the Net Settlement Amount for the benefit of Settlement Class Members. The Court's ruling on the request for the Enhancement Payment shall not affect the enforceability of this Agreement or the terms contained herein.

12. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments under the Settlement, which is currently estimated not to exceed Nine Thousand Dollars ($9,000.00). These costs, which will be paid from the Total Settlement Amount, subject to Court approval, will include, *inter alia*, translating the Class Notice to Spanish, printing, distributing, and tracking Class Notices and other documents for the Settlement, calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process the Settlement, and as requested by the Parties. To the extent actual Settlement Administration Costs are greater than the estimated amount stated herein, such excess amount will be deducted from the Total Settlement Amount, subject to approval by the Court. Any portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not in fact required to fulfill payment to the Settlement Administrator to undertake the requirement settlement administration duties will be part of the Net Settlement Amount for the benefit of Settlement Class Members.

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13. PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of Ten Thousand Dollars ($10,000.00) from the Total Settlement Amount will be allocated toward penalties under the Private Attorneys General Act, California Labor Code Section 2698, *et seq*. (i.e., the PAGA Amount), of which seventy-five percent (75%), or $7,500.00, will be paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) or, $2,500.00, will be distributed to PAGA Employees (i.e., the PAGA Employee Amount) on a *pro rata* basis, based on PAGA Workweeks during the PAGA Period (i.e., the Individual PAGA Payments).

14. Individual Settlement Share Calculations. Individual Settlement Shares will be calculated and apportioned from the Net Settlement Amount based on the Class Members' number of Workweeks, as follows:

a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.

b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.

15. Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated and apportioned from the PAGA Employee Amount based on the PAGA Employees' number of PAGA Workweeks as follows: The Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the total number of PAGA Workweeks of all PAGA Employees to yield the "PAGA Workweek Value," and multiply each PAGA Employee's individual PAGA Workweeks by the PAGA Workweek Value to yield his or her Individual PAGA Payment.

16. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually are issued to the payee. It is expressly understood and agreed that payments made under this Settlement

shall not in any way entitle Plaintiff, Settlement Class Members, or any PAGA Employee to additional compensation or benefits under any new or additional compensation or benefits, or any bonus, contest or other compensation or benefit plan or agreement in place during the Class Period, nor will it entitle Plaintiff, Settlement Class Members, or any PAGA Employee to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the Class Period).

17. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. The Class List shall include all information necessary for the Settlement Administrator to locate Class Members and process payments, including, but not limited to, Class Members' Workweeks or dates of employment, last known addresses, Social Security numbers, and any other information required to effectuate the Agreement. The Class List, and any other data provided by Defendant to the Settlement Administrator, shall be treated as confidential and not subject to disclosure by the Settlement Administrator except that: (a) relevant information may be provided to Class Counsel to the extent necessary to address a disputed claim or to respond to a specific inquiry from a Class Member, or to any third party; (b) to allow Defendant's Counsel and Class Counsel to review and confirm the calculation of Class Members' estimated share of the settlement is accurate and based on the correct information; and (c) as is otherwise necessary for the Settlement Administrator to perform its obligations described in this Agreement. Further, the Settlement Administrator and Class Counsel shall use commercially reasonable efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by this Agreement. The Settlement Administrator shall destroy the data (and all copies of it) in a complete and secure manner when such data is no longer required for purposes of this Agreement. The Settlement Administrator shall ensure that the Class Notice and any other communications to Class Members shall not include the Class Members' Social Security numbers, except for the last four digits.

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18. Notice by First-Class U.S. Mail.

a. Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish (in the form attached as **Exhibit A** to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, after the initial mailing of the Class Notice, the Settlement Administrator will perform a single search for an alternate address by way of skip-trace and perform a single re-mailing of the Class Notice within five (5) calendar days.

19. Dispute Regarding Workweeks and/or PAGA Workweeks. Class Members will have an opportunity to dispute the number of Workweeks and/or PAGA Workweeks to which they have been credited, as reflected in their respective Class Notices. In order to dispute Workweeks and/or PAGA Workweeks, Class Members must submit a written letter to the Settlement Administrator that must: (a) contain the case name and number of the Action; (b) contain the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the disputing Class Member; (c) clearly state that the Class Member disputes the number of Workweeks and/or PAGA Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (d) include information and/or attach documentation demonstrating that the number of Workweeks and/or PAGA Workweeks that he or she contends should be credited to him or her are correct; and (f) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope on the submission will be the exclusive means to determine whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of Defendant's records and data as they pertain to the number of Workweeks and/or PAGA Workweeks to be credited to a disputing Class Member, Defendant's records will be presumed correct and determinative of the dispute. However, if a Class Member produces information and/or documents to the contrary, the Settlement Administrator will evaluate the materials submitted by

the Class Member and the Settlement Administrator will resolve and determine the number of eligible Workweeks and/or PAGA Workweeks that the disputing Class Member should be credited with under the Settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.

20. Settlement Checks. The Settlement Administrator will be responsible for undertaking appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the PAGA Employees in accordance with the Settlement Agreement. When issuing payments, the Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA Payment into one check if the intended recipient for both payments is one individual. Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and twenty (120) calendar days from the date the checks are issued, and thereafter, shall be canceled. Pursuant to California Code of Civil Procedure Section 384, all funds associated with such canceled checks will be transmitted to Capital Pro Bono – Employment Law Clinic in Sacramento, California as the *cy pres* beneficiary within ten calendar (10) days after the expiration of the settlement checks, or such other date that the Court orders. Within the deadline set by the Court, Class Counsel will submit to the Court an amended judgment specifying the amount of such funds payable to the *cy pres* beneficiary, in compliance with California Code of Civil Procedure § 384 and 384.5 and Government Code § 68520. The Parties each represent that they do not have any financial interest, affiliation, or involvement with the proposed *cy pres* recipient. The Settlement Administrator may, as necessary, undertake amended and/or supplemental tax filings and reporting, required under applicable local, state, and federal tax laws, that are necessitated due to the cancelation of any Individual Settlement Payment checks or Individual PAGA Payment checks. To the extent that the Settlement Administrator is able to obtain or receive the return or refund of the amounts that were transmitted to taxing authorities for the employer's and employees' share of taxes, contributions, and/or withholding associated with canceled Individual Settlement Payments, all such amounts shall also be transmitted to Capital Pro Bono – Employment Law Clinic in Sacramento, California. No amount of the Individual Settlement Payments or the Individual PAGA Payments will revert to Defendant for any reason. Settlement Class Members whose Individual Settlement Payment

checks are canceled shall, nevertheless, be bound by the Class Settlement, and PAGA Employees whose Individual PAGA Payment checks are canceled shall, nevertheless, be bound by the PAGA Settlement.

21. Procedure for Requesting Exclusion from the Class Settlement. Any Class Member wishing to be excluded from the Class Settlement must submit a written Request for Exclusion to the Settlement Administrator, by mail, within the Response Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendant's Counsel the number of timely and valid Requests for Exclusion that are submitted, and also identify the individuals who have submitted a timely and valid Request for Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing. Any Class Member who submits a Request for Exclusion is prohibited from making any objection to the Class Settlement. Any Class Member who submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will not be issued an Individual Settlement Payment. The portion of the Net Settlement Amount allocated to Class Members who submit a timely and valid Request for Exclusion will be distributed to all Settlement Class Members on a *pro rata* basis, based on their Workweeks. Any Class Member who does not affirmatively request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion will be bound by all of the terms of the Class Settlement, including and not limited to those pertaining to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants Final Approval to the Settlement. Notwithstanding the above, all PAGA Employees will be bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

22. Procedures for Objecting to the Class Settlement. To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) must submit a timely and complete Notice of Objection to the Settlement Administrator, by mail, on or before the Response Deadline. The Notice of Objection must be signed by the Settlement Class Member and contain all information required by the Settlement Agreement. The postmark date will be deemed the exclusive means for determining that the Notice of Objection is timely. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to object to the

Settlement Agreement or appeal from the Final Approval Order and Judgment. Settlement Class Members, individually or through counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection. The Settlement Administrator will certify jointly to Class Counsel and Defendant's Counsel the number of Notices of Objection that are submitted (specifying which ones were timely and complete and which were not), and also attach them to a declaration that is to be filed with the Court in advance of the Final Approval Hearing.

23. Reports by the Settlement Administrator Regarding Settlement Administration. The Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report which certifies: (a) the number of Class Members who have submitted a dispute of Workweeks and/or PAGA Workweeks; (b) the number of Class Members who have submitted Requests for Exclusion or Notices of Objection; and (c) the number of undeliverable and re-mailed Class Notices. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested, and immediately notify the Parties when it receives a request from an individual or any other entity regarding inclusion in the Class and/or Settlement or regarding a dispute of Workweeks and/or PAGA Workweeks.

24. Certification of Completion. Within ten (10) calendar days of delivering all unclaimed settlement funds to the *cy pres* beneficiary as provided in Paragraph 20 above, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

25. Treatment of Individual Settlement Payments and Individual PAGA Payments. Each Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator. The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The Employer Taxes will be paid separately and in addition to the Total Settlement

Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.

26. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA Employees, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement Administrator will also be responsible for calculating the Employer Taxes, advising Defendant's Counsel of the total amount owed for Employer Taxes, and forwarding all payroll taxes, contributions, and withholdings to the appropriate government authorities.

27. Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement Class Members, and PAGA Employees understand and agree that, except for Defendant's payment of Employer Taxes, they will be solely responsible for correctly characterizing any compensation received under the Settlement on their personal income tax returns and paying any and all taxes due for any and all amounts paid to them under the Settlement.

28. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION

OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

29. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

30. General Release. Upon the Effective Date and full funding of the Fourth Installment, Plaintiff on behalf of herself and her heirs, successors, assigns, attorneys, and agents will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Individual Claims.

31. California Civil Code Section 1542. Plaintiff hereby further agrees that, in conjunction with the release of her claims set forth in Paragraph 30 above, all of her rights under section 1542 of the Civil Code of the State of California are hereby waived as to any claims she may have against Defendant. Section 1542 has been explained to Plaintiff by her counsel and provides as follows:

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

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32. Class Settlement Release. Upon the Effective Date and full funding of the Fourth Installment, Plaintiff and all Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

33. PAGA Settlement Release. Upon the Effective Date and full funding of the Fourth Installment, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

34. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement. Upon execution of this Settlement Agreement, Plaintiff shall promptly obtain a hearing date for Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will be responsible for drafting, and submit this Settlement Agreement to the Court in support of said motion. Class Counsel will provide Defendant's Counsel a draft of the preliminary approval motion before filing it with the Court. Defendant agrees not to oppose the motion for preliminary approval of the Settlement consistent with this Settlement Agreement. Said motion shall apply to the Court for the entry of an order ("Preliminary Approval Order"), which shall be mutually agreed upon by the Parties, seeking the following:

a. Conditionally certifying the Class for settlement purposes only;

b. Granting Preliminary Approval of the Settlement;

c. Preliminarily appointing Plaintiff as representative of the Class;

d. Preliminarily appointing Class Counsel as counsel for the Class;

e. Approving, as to form and content, the mutually-agreed upon and proposed Class Notice and directing its mailing to the Class by First Class U.S. Mail;

f. Approving the manner and method for Class Members to request exclusion from or object to the Class Settlement as contained herein and within the Class Notice; and

g. Scheduling a Final Approval Hearing at which the Court will determine whether Final Approval of the Settlement should be granted.

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35. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After the Response Deadline, and with the Court's permission, a Final Approval Hearing will be conducted to determine whether Final Approval of the Settlement should be granted, along with the amounts properly payable for (a) Individual Settlement Payments; (b) Individual PAGA Payments; (c) LWDA Payment; (d) Attorneys' Fees and Costs; (e) Enhancement Payment; and (f) Settlement Administration Costs. The Final Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the Settlement. Class Counsel will provide Defendant's Counsel a draft of the final approval motion before filing it with the Court. By way of said motion, Plaintiff will apply for the entry of a mutually-agreed upon proposed order and judgment ("Final Approval Order and Judgment"), which will provide for, in substantial part, the following:

a. Approval of the Settlement as fair, reasonable, and adequate, and directing consummation of its terms and provisions;

b. Certification of the Settlement Class;

c. Appointment of Plaintiff as representative of the Class;

d. Appointment of Class Counsel as counsel for the Class;

e. Approval of the application for Attorneys' Fees and Costs to Class Counsel;

f. Approval of the application for Enhancement Payment to Plaintiff;

g. Approval of the application for Settlement Administration Costs to the Settlement Administrator;

h. Directing Defendant to fund all amounts due under the Settlement Agreement and ordered by the Court; and

i. Entering judgment in the Action, while maintaining continuing jurisdiction, in conformity with California Rules of Court 3.769 and the Settlement Agreement.

36. Information Regarding Defendant's Financial Circumstances. If necessary, to support and/or otherwise implement the Settlement, Defendant shall provide documentation and/or a declaration regarding its financial condition to demonstrate that, due to Defendant's financial circumstances, it is unable to fund a higher Total Settlement Amount and is unable to fund the Total Settlement Amount

without the installment plan contained in Paragraph 9.

37. Termination or Rescission of Settlement.

a. If ten percent (10%) or more of the Class Members submit timely and valid Requests for Exclusion, Defendant may elect to rescind the Settlement Agreement. Defendant must exercise this right of rescission in a writing that is provided to Class Counsel within fourteen (14) calendar days of the date on which the Settlement Administrator informs Defendant in writing of the final number of Class Members who have opted out of the Class Settlement. If Defendant exercises this option, Defendant shall pay any costs of settlement administration owed to the Settlement Administrator incurred up to that date.

38. Effects of Termination or Rescission of the Settlement. Termination or Rescission of the Settlement Agreement shall have the following effects:

a. The Settlement Agreement shall be void and shall have no force or effect, and no Party shall be bound by any of its terms;

b. In the event the Settlement Agreement is terminated, Defendant shall have no obligation to make any payments to any Party, Class Member or attorney, except that the terminating Party shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the Settlement has been terminated;

c. The Preliminary Approval Order, including any order certifying the Class, shall be vacated;

d. The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the execution of the Settlement Agreement;

e. Neither this Settlement Agreement, nor any ancillary documents, actions, statements or filings in furtherance of the Settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever; and

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f. Any documents generated to bring the Settlement into effect, will be null and void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

39. Escalator Clause. Defendant represents that, during the period from June 26, 2016 through June 8, 2020 there were approximately 3,614 Workweeks. If it is determined that the total number of Workweeks during the period referenced exceed 3,614 by more than ten percent (10%) (i.e. exceeds 3,975), then, the Total Settlement Amount will be increased on a proportional basis by the same number of percentage points above ten percent (10%) by which the actual number of Workweeks exceeds 3,975 (e.g., if the threshold of 3,975 Workweeks is exceeded by 1%, the Total Settlement Amount will increase by 1%).

40. Continued Jurisdiction. After entry of judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

41. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement.

42. Limitation on Publicity. Plaintiff and Class Counsel will not make any public disclosure of the Settlement or discuss the Settlement with anyone other than those necessary to effectuate the filing of the motion for preliminary approval, until after the motion for preliminary approval is filed. Class Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage her to adhere to, the restriction against any public disclosure of the Settlement until after the motion for preliminary approval is filed. Prior to and following Preliminary Approval of the Settlement, Plaintiff and Class Counsel will not have any communications with any media other than to direct any media inquiries to the public records of the Action on file with the Court and will not publicize the Settlement, including on social media. Class Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage her to adhere to, the restriction against any media comment on the Settlement and

its terms. Class Counsel further agrees not to use the Settlement or any of its terms for any marketing or promotional purposes. Nothing herein will restrict Class Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding Class Counsel's qualifications and experience. Furthermore, Plaintiff and Class Counsel will undertake any and all disclosures and submissions of papers that are required to be made to the LWDA in conformity with PAGA.

43. Entire Agreement. The Settlement Agreement and any attached exhibits constitute the entirety of the Parties' agreement relating to the settlement and transaction completed thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

44. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the Action (including with respect to California Code of Civil Procedure section 583.310), except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

45. Amendment. Prior to the filing of the motion for preliminary approval of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement except by written agreement signed by counsel for all Parties. After the filing of the motion for preliminary approval of the Settlement, the Parties may not amend or modify any provision of the Settlement Agreement except by written agreement signed by counsel for all of the Parties and subject to Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

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46. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under state or federal law.

47. Signatories. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each Settlement Class Member or PAGA Employee execute this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement as to the PAGA Employees, and the releases provided for by the Settlement Agreement shall have the same force and effect as if the Settlement Agreement were executed by each Settlement Class Member and PAGA Employee.

48. Binding on Successors and Assigns. The Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

49. California Law Governs. All terms of the Settlement Agreement and attached exhibits hereto will be governed by and interpreted according to the laws of the State of California.

50. Execution and Counterparts. The Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile, electronic, and scanned copies of the signature page, will be deemed to be one and the same instrument.

51. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each

represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of the Settlement Agreement. In addition, if necessary to obtain approval of the Settlement, the Mediator may execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

52. Invalidity of Any Provision. Before declaring any provision of the Settlement 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 find all provisions of the Settlement Agreement valid and enforceable.

53. Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate to implement the Settlement.

54. Non-Admission of Liability. The Parties enter into the Settlement Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into the Settlement Agreement, Defendant does not admit, and specifically denies, that it has violated any state, federal, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of the Settlement Agreement, the Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with state, federal, local or other applicable law.

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55. Captions. The captions and paragraph numbers in the Settlement 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 the Settlement Agreement.

56. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of the Settlement Agreement. Accordingly, the Settlement Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed equally to the preparation of the Settlement Agreement.

57. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of the Settlement Agreement, and that the Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

58. All Terms Subject to Final Court Approval. All amounts and procedures described in the Settlement Agreement herein will be subject to final Court approval.

59. Notices. All notices, demands, and other communications to be provided concerning the Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set for below, or such other addresses as either Party may designate in writing from time to time:

To Plaintiff and Class Counsel:

Edwin Aiwazian, Esq.
Arby Aiwazian, Esq.
Joanna Ghosh, Esq.
Alexandra Rose, Esq.
**LAWYERS *for* JUSTICE, PC**
410 West Arden Avenue, Suite 203
Glendale, California 91203

To Defendant:

Alden J. Parker
William R.H. Mosher
**FISHER & PHILLIPS LLP**
621 Capitol Mall, Suite 1400
Sacramento, California 95814

60. Final Approval Order and Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment to the Class will be required.

61. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

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

**IT IS SO AGREED.**

**PLAINTIFF KAILIE FAGEN**

Electronically Signed 2023-05-10 01:45:01 UTC - 172.88.110.250

Dated: 05/09/2023, 2023

Nintex AssureSign® fe7dcc58-2334-40e4-83c6-affd017806fc

Kailie Fagen, Plaintiff

**DEFENDANT A&E FAGEN, INC.**

Dated: ________________, 2023

________________________________________

Full Name: ______________________________

Title: __________________________________
On behalf of A&E Fagen, Inc.

**APPROVED AS TO FORM:**

**LAWYERS *for* JUSTICE, PC**

Dated: May 10, 2023

________________________________________
Edwin Aiwazian
Arby Aiwazian
Joanna Ghosh
Alexandra Rose
*Attorneys for* Plaintiff Kailie Fagen and Proposed Class Counsel

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61. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

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

**IT IS SO AGREED.**

**PLAINTIFF KAILIE FAGEN**

Dated: ________________, 2023

______________________________
Kailie Fagen, Plaintiff

**DEFENDANT A&E FAGEN, INC.**

Dated: MAY 4th, 2023

______________________________

Full Name: EDGAR L FAGEN

Title: OWNER / OPERATOR.
On behalf of A&E Fagen, Inc.

**APPROVED AS TO FORM:**

**LAWYERS *for* JUSTICE, PC**

Dated: ________________, 2023

______________________________
Edwin Aiwazian
Arby Aiwazian
Joanna Ghosh
Alexandra Rose
*Attorneys for* Plaintiff Kailie Fagen and Proposed Class Counsel

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**FISHER & PHILLIPS LLP**

Dated: May 12, 2023

Alden J. Parker
William R.H. Mosher
*Attorneys for* Defendant A&E Fagen, Inc.

# EXHIBIT A

**<u>NOTICE OF CLASS ACTION SETTLEMENT</u>**

***Veronica Bernal, et al. v. A&E Fagen, Inc., et al.***
**Superior Court of California for the County of Los Angeles, Case No. BC712866**

**PLEASE READ THIS NOTICE CAREFULLY**.

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

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

**This Notice is designed to advise you of your rights and options with respect to the settlement.**

**YOU ARE NOTIFIED THAT:** A class and representative action settlement has been reached between Plaintiff Kailie Fagen ("Plaintiff") and Defendant A&E Fagen, Inc. ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the case entitled *Veronica Bernal, et al. v. A&E Fagen, Inc.*, *et al*., Los Angeles County Superior Court, Case No. BC712866 ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

## I. <u>IMPORTANT DEFINITIONS</u>

"**Class**" means all current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the Class Period.

"**Class Member**" means a member of the Class.

"**Class Period**" is the time period from July 5, 2014, through [date of Preliminary Approval].

"**Class Settlement**" means the settlement and resolution of all Released Class Claims.

"**PAGA Employees**" means all Class Members employed by Defendant at any time during the PAGA Period.

"**PAGA Period**" means the time period from February 10, 2021, through [date of Preliminary Approval].

"**PAGA Settlement**" means the settlement and resolution of the Released PAGA Claims.

## II. <u>BACKGROUND OF THE LAWSUIT</u>

On July 5, 2018, former plaintiffs Veronica Bernal and Franchessca Alvarez-Reyes commenced a putative class action lawsuit by filing the Class Action Complaint for Damages against Defendant and former defendant Whittier Grocery Outlet in the Los Angeles County Superior Court, Case No. BC712866. On November 12, 2019, the Court entered an Order dismissing former defendant Whittier Grocery Outlet without prejudice from the Action. On January 11, 2021, the Court entered an Order dismissing former plaintiff Franchessca Alvarez-Reyes and her individual claims without prejudice from the Action. On February 10, 2022, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code that Plaintiff contends were violated ("PAGA Letter"). On May 19, 2022, former plaintiff Veronica Bernal and Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("Operative Complaint"), adding Plaintiff and a cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, et seq. ("PAGA"). On August 31, 2022, the Court entered an Order dismissing former plaintiff Veronica Bernal and her individual claims without prejudice from the Action.

Plaintiff alleges that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide accurate wage statements, keep requisite payroll records, and reimburse business expenses, and thereby engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et* *seq*., and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.

Defendant denies Plaintiff's allegations in their entirety. Defendant contends that it paid all minimum wages due to its employees, paid all overtime wages due to its employees, provided all required meal periods to its employees, provided all required rest breaks to its employees, timely paid its employees all wages during their employment and at separation, provided its employees with legally compliant wage statements, maintained legally compliant payroll records, reimbursed its employees for all business expenses they incurred, did not commit any acts of unfair competition, complied with all requirements contained in the California Private Attorneys General Act, and complied with all other requirements of state and federal law. Defendant contends that its affirmative defenses to this action may otherwise prevent or limit Plaintiff's class and PAGA claims.

After participating in mediation with a neutral third-party mediator, the Parties agreed to a settlement and entered into a Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement").

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. Pursuant to that order, the Court has appointed Phoenix Class Action Administration Solutions as the administrator of the Settlement ("Settlement Administrator"), Plaintiff Kailie Fagen as representative of the Class ("Class Representative"), and the following Plaintiff's attorneys as counsel for the Class ("Class Counsel"):

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

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks and/or PAGA Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object or seek exclusion from the PAGA Settlement and all PAGA Employees will be bound to the PAGA Settlement if the Court grants final approval of the Settlement.

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

## III. <u>SUMMARY OF THE PROPOSED SETTLEMENT</u>

### A. <u>Settlement Formula</u>

The Total Settlement Amount is One Hundred Ninety-Two Thousand Five Hundred Dollars ($192,500) (the "Total Settlement Amount"), subject to possible increase if it is determined that the number of Workweeks exceeds a predetermined threshold. The portion of the Total Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Total Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys' fees, in an amount not to exceed 35% of the Total Settlement Amount (i.e., $67,375.00 if the Total Settlement Amount is $192,500.00) and reimbursement of litigation costs and expenses in an amount not to exceed Sixteen Thousand Dollars ($16,000.00) (collectively, "Attorneys' Fees and Costs") to Class Counsel; (2) Enhancement Payment in an amount not to exceed Seven Thousand Five Hundred Dollars ($7,500.00) to

Plaintiff for her services in the Action; (3) the amount of Ten Thousand Dollars ($10,000.00) allocated toward civil penalties under the Private Attorneys General Act ("PAGA Amount"), of which the LWDA will be paid 75% (i.e., $7,500.00) and the remaining 25% (i.e., $2,500.00) will be distributed to PAGA Employees ("PAGA Employee Amount"); and (4) Settlement Administration Costs in an amount not to exceed Nine Thousand Dollars ($9,000.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") based on the number of weeks each Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period ("Workweeks"). The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiplied each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion ("Settlement Class Members") will be issued payment of their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2, and eighty percent (80%) penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee's share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Share, resulting in a net payment to the Settlement Class Member ( "Individual Settlement Payment"). The employer's share of taxes and contribution in connection with the wages portion of Individual Settlement Shares ("Employer Taxes") shall be paid by Defendant separately and in addition to the Total Settlement Amount.

PAGA Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Employee Amount ("Individual PAGA Payment") based on the number of Workweeks each PAGA Employee worked for Defendant during the PAGA Period ("PAGA Workweeks"). The Settlement Administrator has divided the PAGA Employee Amount by the total number of PAGA Workweeks of all PAGA Employees to yield the "PAGA Workweek Value," and multiplied each PAGA Employee's individual PAGA Workweeks by the PAGA Workweek Value to yield his or her Individual PAGA Payment that he or she may be eligible to receive under the PAGA Settlement (which is listed in Section III.C below). PAGA Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Defendant will fund the Total Settlement Amount in four (4) installment payments, over the course of approximately two (2) years, as follows:

- Within thirty (30) calendar days of Final Approval, Defendant will make a deposit of Sixty-Seven Thousand Five Hundred Dollars ($67,500.00) of the Total Settlement Amount, into a qualified settlement account established by the Settlement Administrator ("First Installment").
- Within six (6) months after the First Installment, Defendant will make a deposit of Forty-Five Thousand Dollars ($45,000.00) of the Total Settlement Amount, into the qualified settlement account established by the Settlement Administrator ("Second Installment").
- Within six (6) months after the Second Installment, Defendant will make a deposit of Forty Thousand Dollars ($40,000.00) of the Total Settlement Amount, into the qualified settlement account established by the Settlement Administrator ("Third Installment").
- Within six (6) months after the Third Installment, Defendant will make a deposit of Forty Thousand Dollars ($40,000.00) of the Total Settlement Amount, plus an amount sufficient to pay Employers Taxes, into the qualified settlement account established by the Settlement Administrator ("Forth Installment").
- Within seven (7) calendar days of the funding of the Fourth Installment, the Settlement Administrator will issue the Individual Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees, LWDA Payment to the LWDA, Enhancement Payment to Plaintiff, Attorneys' Fees and Costs to Class Counsel, and the Settlement Administration Costs to itself.

The timing of these distributions will depend on the date of Final Approval of the Settlement and the dates on which

Defendant funds the installments.

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

### B. Your Workweeks and PAGA Workweeks (if applicable) Based on Defendant's Records

According to Defendant's records,

- **From July 5, 2014, through [date of Preliminary Approval] (i.e., the Class Period), you are credited as having worked [_____] Workweeks.**

- **From February 10, 2021, through [date of Preliminary Approval] (i.e., the PAGA Period), you are credited as having worked [_____] PAGA Workweeks.**

If you wish to dispute the Workweeks and/or PAGA Workweeks credited to you, you may submit your dispute by way of written letter that is sent to the Settlement Administrator that: (a) contains the case name and number of the Action (*Veronica Bernal, et al. v. A&E Fagen, Inc., et al.*, Case No. BC712866); (b) contains your full name, signature, address, telephone number, and last four digits of your Social Security Number; (c) clearly states that you dispute the number of Workweeks and/or PAGA Workweeks credited to you and what you contend is the correct number to be credited to you; (d) includes information and/or attaches documentation demonstrating that the number of Workweeks and/or PAGA Workweeks that you contend should be credited to you are correct; and (e) is returned by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **on or before** [**Response Deadline**].

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

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

> **Under the terms of the Settlement, your Individual Settlement Share is estimated to be $___________. The Individual Settlement Share is subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.**
>
> **Under the terms of the Settlement, your Individual PAGA Payment is estimated to be $___________ and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.**

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

### D. Release of Claims

Upon the Effective Date and full funding of the Second Installment, Plaintiff and all Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

Upon the Effective Date and full funding of the Fourth Installment, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

"Released Class Claims" means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, damages, or causes of action which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, under any federal, state or local law, and shall specifically include claims for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, reimburse necessary business-related expenses, unfair or unlawful business practices pursuant to California Business and Professions Code sections 17200, *et seq*. based on the aforementioned, and any violation of California Labor Code arising from or related to the aforementioned, including, violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and Industrial Welfare Commission Wage Orders.

"Released PAGA Claims" means any and all claims arising from any of the factual allegations in the PAGA Letter and/or the Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, codified in California Labor Code section 2698, *et seq*., including for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and Industrial Welfare Commission Wage Orders.

"Released Parties" means Defendant and its respective owners, agents, attorneys, insurers, past and present companies, divisions, affiliates, DBAs (if any), predecessors, successors, shareholders, officers, directors, managers, management employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by, through, under or in concert with any of them.

### E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (i.e., $67,375.00 if the Total Settlement Amount is $192,500.00) and reimbursement of litigation costs and expenses in an amount not to exceed Sixteen Thousand Dollars ($16,000.00) (collectively, "Attorneys' Fees and Costs"), subject to approval by the Court. The Attorneys' Fees and Costs granted by the Court will be paid from the Total Settlement Amount.

### F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of up to Seven Thousand Five Hundred Dollars ($7,500.00) ("Enhancement Payment"), in recognition of her services in connection with the Action. The Enhancement Payment will be paid from the Total Settlement Amount, subject to approval by the Court, and if awarded, will be paid to Plaintiff in addition to her Individual Settlement Payment and Individual PAGA Payment that she is entitled to under the Settlement.

### G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Nine Thousand Dollars ($9,000.00) ("Settlement Administration Costs") for the costs of the notice and settlement administration process, including and not limited to, translating the Class Notice to Spanish, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and dispute of Workweeks and/or PAGA Workweeks, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Total Settlement Amount, subject to approval by the Court.

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

### A. Participate in the Settlement

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

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

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

As a Class Member and PAGA Employee, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

### B. Request Exclusion from the Class Settlement

Class Members may request to be excluded from the Class Settlement by submitting a letter indicating a request to be excluded from the Class Settlement ("Request for Exclusion") to the Settlement Administrator.

A Request for Exclusion must: (a) contain the case name and number of the Action (*Veronica Bernal, et al. v. A&E Fagen, Inc., et al.*, Case No. BC712866); (b) contain your full name, signature, address, telephone number, and last four digits of your Social Security Number; (c) clearly state that you do not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address below, postmarked **on or before** [**Response Deadline**].

[Settlement Administrator]
[Mailing Address]

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

### C. Object to the Class Settlement

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion from the Class Settlement, by, submitting a timely and valid written objection ("Notice of Objection") to the Settlement Administrator or presenting your objection at the Final Approval Hearing.

A Notice of Objection must: (a) contain the case name and number of the Action (*Veronica Bernal, et al. v. A&E Fagen, Inc.*, Case No. BC712866); (b) contain your full name, signature, address, telephone number, and last four digits of your Social Security Number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address listed in section IV.B above, postmarked **on or before** [**Response Deadline**].

## V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 14 of the Los Angeles County Superior Court, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, on [**date**], at [**time**], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The Final Approval hearing may be continued without further notice to Class Members and PAGA Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear by audio or video if you wish to.

Please note, due to COVID-19, there may be limitations on personal appearances and telephonic appearances may be an option. You can find information regarding the Court's most current COVID-19 guidelines online at: https://www.lacourt.org/.
You can find information regarding appearing remotely through LA CourtConnect online at: http://www.lacourt.org/lacceligibility/ui/civil.aspx?casetype=ci.

## VI. ADDITIONAL INFORMATION

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

You may view the Settlement Agreement and other court records in the Action for a fee by making an appointment in advance and visiting the civil clerk's office during business hours, located at the Stanley Mosk Courthouse, 111 North Hill Street, California, 90012, or by online by visiting the following website: https://www.lacourt.org/casesummary/ui.

Please note, due to the COVID-19 pandemic, there may be restrictions on access to Court facilities and records. You can find information regarding the Court's most current COVID-19 guidelines online at: https://www.lacourt.org/.

You may also visit the Settlement Administrator's website at ____________ for more information and documents relating to the Settlement, including the Final Approval Order and Judgment.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.**

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

# EXHIBIT 2

LAWYERS FOR JUSTICE, PC

February 10, 2022

*BY FILING ON THE CALIFORNIA LABOR & WORKFORCE DEVELOPMENT AGENCY'S ONLINE PAGA FILING SYSTEM*

California Labor & Workforce Development Agency

**Re:** ***A&E FAGEN, INC.***

Dear Representative:

We have been retained to represent Kailie Fagen against A&E Fagen, Inc. (including its any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees) (collectively referred to as "A&E Fagen") for violations of California wage-and-hour laws.

For all of the reasons set forth in the Complaint, asserted in the Lawsuit, and also those espoused herein, Ms. Fagen seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA.

Ms. Fagen will seek penalties on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

A&E Fagen employed Ms. Fagen as an hourly-paid, non-exempt employee from approximately July 2016 to approximately April 2021, in the State of California. The "aggrieved employees" that Ms. Fagen seeks penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for A&E Fagen within the State of California.

Based on the facts and theories in the Complaint, asserted in the Lawsuit, and also those espoused herein, A&E Fagen has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders.

A&E Fagen required aggrieved employees to perform work off-the-clock before their scheduled shifts, after their scheduled shifts, and during meal breaks, as well as to perform work during rest breaks, and as a result, A&E Fagen failed to properly compensate aggrieved employees for all time worked. For example, Defendant's policy requires its non-exempt employees to provide prompt attention to customers at all times, resulting in employees being pressured to assist customers with finding items, answer questions, and perform other work tasks while off-the-clock. Further, before clocking in for their scheduled shifts, Ms. Fagen and other aggrieved employees were required to arrive at work early in order to review a list of tasks that needed to be completed during their shifts and after clocking out of their scheduled shifts, they were expected to perform tasks such as clean

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restrooms, clean spills, balance cashier drawers, and stock items. In addition, Ms. Fagen and other aggrieved employees regularly suffered short, late, and/or missed meal and rest periods due to severe understaffing, heavy workloads, and questions from supervisors, other employees, and customers.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week, and/or more than six (6) consecutive days in one week, without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Ms. Fagen and other aggrieved employees worked in excess of 8 hours in a day, 40 hours in a week, and/or 6 days in a workweek. Therefore, Ms. Fagen and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked. A&E Fagen's failure to pay overtime wages also includes, and is not limited to, A&E Fagen's failure to properly calculate the regular rate of pay and failure to include earned commissions, non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-discretionary production and/or performance pay, and/or shift differentials in its calculation of the regular rate of pay used to calculate the overtime rate for the payment of overtime wages. For example, A&E Fagen failed to compensate aggrieved employees at one-and-one half times the appropriate regular rate of pay, instead paying them only their base hourly rate, or at times less than that rate, for hours worked in excess of 8 hours in a day, 40 hours in a week, and/or 6 days in a workweek.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, A&E Fagen required Ms. Fagen and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods. A&E Fagen required aggrieved employees to remain working through rest breaks, failed to relieve aggrieved employees of all duties and relinquish control over how they spent their meal and rest breaks, and failed to provide compliant meal periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, A&E Fagen failed to pay Ms. Fagen and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202. California Labor Code section 203 provides that if an employer willfully fails to pay the wages of an employee who is discharged or quits, the wages of the employee will continue as a penalty from the day due at the same rate until paid or until an action is commenced. During the relevant time period, A&E Fagen willfully failed to pay the wages due to Ms. Fagen and other aggrieved employees who were discharged or quit, and also failed to pay penalties which accrued due to its willful failure to timely pay wages. For example, Ms. Fagen and other aggrieved employees were not paid at the time of their discharge wages earned and unpaid throughout their employment, including but not limited to, minimum wages for time worked off-the-clock to perform work duties and for meal and rest period premium payments.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, A&E Fagen failed to pay Ms. Fagen and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. For example, Ms. Fagen and other aggrieved employees were not timely paid wages during their employment, including but not limited to, minimum wages for time worked off-the-clock to perform work duties and for meal and rest period premium payments.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, A&E Fagen did not provide Ms. Fagen and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from A&E Fagen were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Ms. Fagen and other aggrieved employees. For example, Defendant failed to account for and compensate for all time worked "off-the-clock," and as a result, it failed to provide complete and accurate wage statements.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars ($50) for each aggrieved employee per pay period for the initial violation and one hundred dollars ($100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Ms. Fagen and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Ms. Fagen and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Ms. Fagen and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Ms. Fagen and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, A&E Fagen failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid, to Ms. Fagen and other aggrieved employees. For example, Defendant failed to account for and compensate for all time worked "off-the-clock," and as a result, it failed to keep accurate and complete payroll records.

California Labor Code California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, A&E Fagen did not provide Ms. Fagen and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock." For example, A&E Fagen effectively paid of zero dollars per hour for time Ms. Fagen and the other aggrieved employees worked off-the-clock performing work duties, which resulted in an underpayment of minimum wages to Ms. Fagen and other aggrieved employees.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Ms. Fagen and other aggrieved employees incurred necessary business-related expenses and costs that were not reimbursed by A&E Fagen. These costs include, but are not limited to, the costs purchasing and maintaining clothing, such as pants and shoes, to comply with A&E Fagen's dress code and the costs of the use of personal cell phones for business-related purposes.

Therefore, on behalf of all aggrieved employees, Ms. Fagen seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, and facts set forth in the attached Complaint and asserted in the Lawsuit, which could be assessed and collected by the Labor and Workforce Development Agency for violation of the California Labor Code, pursuant to PAGA.

If you have any questions or require additional information, please do not hesitate to contact us.

With kind regards,

Edwin Aiwazian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

A&E Fagen, Inc.
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