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and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – POMONA COURTHOUSE SOUTH

SAMUEL PLACENSIA, on behalf of
himself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

ARM AND J CORPORATION, a
California corporation, dba PUENTE
HILLS CHRYSLER DODGE JEEP RAM,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 21PSCV00211

Assigned to the Hon. Peter A. Hernandez, Dept. O

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

DATE: March 8, 2022

TIME: 9:30 a.m.

DEPT.: O

Reservation No.: 903200864659

Action Filed: March 12, 2021

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Samuel Placencia ("Placencia" or
4 "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts set
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Since becoming a member of the Bar, I have practiced law with my partner/father,
14 Kenneth, at Gaines & Gaines, APLC. My father has practiced law in California for over 40 years,
15 emphasizing litigation for the vast majority of his career. Our current practice specializes in
16 litigation, with an emphasis in employment disputes like this one. Over 95% of our practice is
17 devoted to complex employment litigation.

18 5. My firm has represented employees in complex employment matters such as this
19 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
20 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
21 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

22 **Factual and Procedural Background:**

23 6. On January 5, 2021, Plaintiff sent a letter to the LWDA, alleging Defendant violated
24 the California Labor Code and seeking penalties under PAGA. Specifically, Plaintiff alleged
25 Defendant failed to pay wages and premium wages to Defendant's non-exempt California
26 employees, denied employees meal periods and rest periods, failed to reimburse business
27 expenses, failed to provide accurate itemized wage statements, and failed to timely pay wages at
28 the separation of employment.

1 7. On March 12, 2021, Plaintiff filed a representative action complaint in the Los
2 Angeles County Superior court titled *Samuel Placencia, et al. vs. Arm and J Corporation, A*
3 *California Corporation, dba Puente Hills Chrysler Dodge Jeep Ram, et al.*, case no.
4 21PSCV00211. Plaintiff alleges Defendant violated various sections of the California Labor Code
5 and applicable wage orders as alleged in his letter to the LWDA.

6 8. The First Amended Complaint, which will be filed as part of the settlement approval
7 process, asserts direct class and representative action claims against Defendant for (1) failure to
8 pay all minimum wages and overtime wages (Labor Code § 510 and 1194); (2) failure to provide
9 rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 4-2001); (3)
10 failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, and 512;
11 IWC Wage Order 4-2001); (4) knowing and intentional failure to comply with itemized employee
12 wage statement provisions (Labor Code §§ 226(a), (e), (h)); (5) failure to timely pay wages due at
13 separation of employment (Labor Code §§ 201-203); (6) failure to reimburse employee business
14 expenses (Labor Code § 2802); (7) violation of Business and Professions Code § 17200; and (8)
15 penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-203, 226(a),
16 226.3, 226.7, 510, 512, 558, 1194, and 2802. (the "First Amended Complaint").

17 9. The Parties engaged in informal discovery prior to attending mediation in the
18 Action, including but not limited to: pre-litigation investigation, exchange of informal written
19 discovery, including workweek data, the number of class members, written policies, payroll
20 records, and timekeeping records for the purposes of mediation. The Parties thoroughly
21 investigated all of the claims in the Action prior to negotiating a settlement in the Action.

22 10. On October 4, 2021, the Parties attended a formal mediation with well-known
23 mediator Marc J. Feder, Esq. The Parties reached a settlement agreement at the conclusion of the
24 mediation and executed a memorandum of understanding which is superseded in full by their
25 Settlement Agreement.

26 11. Based on their own independent investigation and evaluation, Class Counsel are of
27 the opinion that settlement for the consideration and on the terms set forth in this Settlement
28 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in

1 light of all known facts and circumstances, including the risk of significant delay, the risk the
2 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.
3 Defendant and its counsel also agree that this settlement is fair and in the best interest of the
4 Settlement Class.

5 12. Defendant has denied and continues to deny each and all of the claims and
6 allegations in the Action. Defendant has asserted and continues to assert many defenses thereto
7 and has expressly denied and continues to deny any fault, wrongdoing, or liability whatsoever
8 arising out of the conduct alleged in the Action. Defendant contends that it has, at all times,
9 complied with the provisions of the California Labor Code, the California Business and
10 Professions Code, and all applicable federal and California laws and regulations. Neither the
11 Settlement (including all drafts hereof) nor any document referred to herein, nor any action taken
12 to carry out this Settlement is, may be construed as, or may be used in any proceeding as an
13 admission by or against Defendant of any fault, wrongdoing, infirmity of defense, or liability
14 whatsoever. Defendant expressly denies any fault, wrongdoing, or liability, and expressly denies
15 the validity of all causes of action and prayers for relief asserted in the Action.

16 **Investigation and Settlement Discussions**

17 13. The Parties engaged in informal discovery prior to attending mediation in the
18 Action, including but not limited to: pre-litigation investigation, exchange of informal written
19 discovery, including Workweek data, number of class members, written policies, payroll records,
20 and timekeeping records for the purposes of mediation. The Parties thoroughly investigated all of
21 the claims in the Action prior to negotiating a settlement in the Action.

22 14. On September 2, 2021, the Parties attended a formal mediation with Marc Feder,
23 Esq. The Parties reached a settlement agreement at the conclusion of the mediation and executed
24 a memorandum of understanding which is superseded in full by their Settlement Agreement.

25 15. Defendant has determined to settle the Action in the manner and upon the terms and
26 conditions set forth herein solely to avoid the expense, inconvenience, and burden of further legal
27 proceedings and the uncertainties of trials and appeals.
28

1 16. Defendant has denied and continues to deny each and all of the claims and
2 allegations in the Action. Defendant has asserted and continues to assert many defenses thereto
3 and has expressly denied and continues to deny any fault, wrongdoing, or liability whatsoever
4 arising out of the conduct alleged in the Action. Defendant contends that it has, at all times,
5 complied with the provisions of the California Labor Code, the California Business and
6 Professions Code, and all applicable federal and California laws and regulations. Neither the
7 Settlement (including all drafts hereof) nor any document referred to herein, nor any action taken
8 to carry out this Settlement is, may be construed as, or may be used in any proceeding as an
9 admission by or against Defendant of any fault, wrongdoing, infirmity of defense, or liability
10 whatsoever. Defendant expressly denies any fault, wrongdoing, or liability, and expressly denies
11 the validity of all causes of action and prayers for relief asserted in the Action.

12 17. The parties jointly prepared the Joint Stipulation of Settlement and Release of
13 Claims ("Settlement Agreement", "Settlement", or "Stip."). A true and correct copy of the
14 Settlement is attached hereto as **Exhibit B**.

15 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
16 **Litigation:**

17 18. Based on our independent investigation and evaluation, my colleagues and I are of
18 the opinion that the consideration and terms of the Settlement as set forth below, considering the
19 representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all
20 known facts and circumstances, and is in the best interests of the Class. My colleagues and I are
21 also of the opinion that the total consideration and payment set forth in the Settlement is adequate
22 in light of the uncertainties surrounding the risk of further litigation, and the possible defenses and
23 offset claims that Defendant has asserted and could assert.

24 19. My office created a comprehensive damage analysis using sampling information
25 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
26 falls within a realistic range of recovery on Class Members' claims.

27 20. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members all wages
28 due during the course of their employment, in violation of Labor Code §§ 510, 558, 1194 and IWC

1 Wage Order 4-2001. Defendant paid Plaintiff and Class Members piece-rate, commission and
2 bonus wages. However, some tasks had no compensable piece-rate or commission unit associated
3 with them, such that they went uncompensated. This includes rest periods, which must be
4 separately paid; however, Defendant allegedly failed to provide compensated rest periods and
5 denied rest periods altogether. Plaintiff and Class Members were not compensated for all hours
6 worked (and thus, all minimum wages due) when they performed tasks for which no piece-rate or
7 commission was associated, including rest periods. Based on Plaintiff's investigation, analysis
8 and expert review of wage data, Plaintiff estimates that the total sum of \$339,600 was underpaid.
9 Defendant, however, asserted multiple defenses to this claim, and argued that even if any sums
10 were underpaid, such amounts were nominal and nowhere near the amount proffered by Plaintiff.
11 A discount was required and warranted to resolve the matter at this junction of the litigation.

12 21. Plaintiff further alleges that Defendant failed to offer or authorize uninterrupted ten-
13 minute on-the-clock rest periods to Plaintiff and Class Members for every four hours worked or
14 major fraction thereof, but did not pay them premium wages in the amount of one hour's pay for
15 these denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001.
16 Plaintiff and Class Members contend that they were routinely unable, and not authorized, to take
17 a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not
18 paid premium wages of one hour's pay for each missed rest period. Moreover, Defendant's meal
19 period policy states that non-exempt employees are to take their meal periods off-premises;
20 Defendant's rest period policy does not contain this language, which Plaintiff argues indicates that
21 the rest periods must impermissibly be taken on the company premises. This policy and practice
22 would violate *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal. 5th 257, which held that the
23 rest period requirement "obligates employers to permit and authorizes employees to take off-duty
24 rest periods. That is, during rest periods employers must relieve employees of all duties and
25 relinquish control over how employees spend their time." *Id.* at 269. Plaintiff estimates the value
26 of this claim to be approximately \$1,018,800 based on a 100% violation rate. Defendant
27 vigorously argued, however, that it fully complied with all rest break requirements incorporated
28 within California law, and argued that even if sums were underpaid, such amounts were nominal

1 and nowhere near the amount proffered by Plaintiff. Due to the risks inherent in prosecuting this
2 claim further, a discount was required and warranted to resolve the matter at this junction of the
3 litigation.

4 22. As a result of Defendant's alleged unlawful meal period practices, Plaintiff alleges
5 that Class Members were not always provided the meal periods to which they were entitled. For
6 each workday on which Plaintiff and non-exempt Aggrieved Employees were denied a meal
7 period, or when a meal period was late or cut short, the employee must be paid a one-hour premium
8 as additional wages beyond earnings for actual hours worked. See IWC Wage Order No. 4,
9 subdivision 12(a). Plaintiff and Class Members contend that they were routinely denied, and not
10 authorized to take, an uninterrupted, 30-minute meal period for every shift worked over five hours
11 in duration, or second, uninterrupted, 30-minute meal period for every shift worked over ten hours
12 in duration, but were not paid premium wages of one hour's pay for each missed meal period.
13 When employees did receive a meal period, they would typically be interrupted and required to
14 go back to work or would simply clock out for their meal period and continue working, without
15 compensation. Plaintiff's time records exhibit a one-hour meal break each day, even though that
16 time was largely spent working for Defendant selling cars. Defendant did pay some meal period
17 premiums, but they were only paid for entirely missed meal periods and not late or short meal
18 periods, which represent the majority of the violations. Furthermore, an analysis of Plaintiff's
19 time records indicates that nearly two-thirds of all pay periods worked by Plaintiff exhibit a meal
20 period violation. Plaintiff and Class Members are entitled to significant wages for non-compliant
21 meal periods and unpaid minimum and overtime wages for all uncompensated time during off-
22 the-clock meal periods. Plaintiff estimates the value of this claim to be approximately \$407,250.
23 Defendant vehemently denies this claim, contends that employees were routinely offered their
24 meal periods, and contends that its time records are accurate such that no employees worked off
25 the clock during purported meal periods. A compromise was required to resolve this claim at this
26 juncture of the litigation.

27 23. Plaintiff further alleges that he and other Class Members were required to incur
28 expenses in the performance of their job duties for which they were not fully reimbursed, in

1 violation of Labor Code § 2802. Plaintiff and Class Members contend that they were required to
2 use their own personal cellular phone to perform work for Defendant, but were not fully
3 reimbursed by Defendant for these expenses. Plaintiff estimates the value of this claim to be up to
4 \$60,000. Defendant denies this claim, maintains that it reimbursed its employees properly in
5 compliance with Labor Code § 2802, and contends that employees were never required to use their
6 own cell phones but instead may have chosen to do so, a defense which would have defeated the
7 claim in its entirety. A discount was required and warranted to resolve the claim at this junction
8 of the litigation.

9 24. Class Members also sought wage statement penalties pursuant to Labor Code §
10 226(e), waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of the
11 underlying violations alleged. The value of these penalties – which are derivative, discretionary,
12 and subject to defenses of their own – is approximately \$2,439,600, a substantial amount which
13 required a compromise to resolve based on risk of litigation. Plaintiff believed it was unlikely that
14 many of these penalties could be recovered because their value would eclipse the value of alleged
15 underpaid wages (if wages were recovered at all), because Plaintiff's claims are novel, and because
16 of Defendant's potential independent defenses to these penalties.

17 25. The discount negotiated for settlement here is a reasonable compromise, particularly
18 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
19 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which
20 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses
21 on the merits of the claims), and the fact that Plaintiff and all Class Members entered into
22 arbitration agreements with Defendant, which may render the class action claims valueless
23 because they cannot be pursued in a group action and few, if any, employees are likely to pursue
24 their claims on an individual basis. Class certification is a substantial risk in any class action case.
25 Here, while Plaintiff maintains that the requirements of class certification are met, Defendant
26 proffers various arguments why class treatment is not appropriate, including but not limited to that
27 individualized inquires among class members predominate over common ones. If Defendant was
28

1 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
2 most class members would likely not file individual claims.

3 26. Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible
4 that the Court would agree with Defendant's position that its meal and rest period policies and
5 practices complied with the requirements of California law or could not be certified. In such a
6 case, the value of the majority of Plaintiff's claims would be zero.

7 27. Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty
8 award on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant
9 to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not
10 impose all penalties pursuant to its discretionary power to reduce them.

11 28. Defendant strongly contends that its policies and practices do not violate any laws.
12 It contends that it properly provided for all meal and rest periods and fully compensated their
13 employees for all time worked. It further contends that the wage statements it provides to its
14 employees are fully compliant with California law.

15 29. When the costs and risks of non-certification and loss on the merits are considered,
16 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

17 30. The settlement for each Class Member is fair, reasonable and adequate, given the
18 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
19 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
20 Action.

21 **Class Certification Requirements:**

22 31. To date, no class has been certified. The Stipulation of Settlement contains a
23 provision pursuant to which we stipulate to the Court's provisional certification of the
24 approximately 420-member Settlement Class, but do so for purposes of this settlement only.

25 32. In this case, the Class Members are identifiable from Defendant's employment and
26 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
27 According to Defendant's records, the Class comprises approximately 420 employees.
28

33. The Class Members' claims all stem from a common source: members of the Settlement Class allege that Defendant violated the same Labor Code provisions in connection with their employment. All members of the Class seek the same relief under the same California laws (related to unpaid wages, unpaid meal and rest period premiums, unreimbursed business expenses, inaccurate or incomplete wage statements, failure to timely pay wages due upon separation, and derivative claims). Under these circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement Class for settlement purposes.

34. In this case, named Plaintiff and proposed Class Representative Samuel Placencia is a former non-exempt employee who worked for Defendant in the State of California during the Class Period. He contends that Defendant failed to pay all wages, failed to provide meal and rest periods, failed to comply with itemized employee wage statement provisions, failed to reimburse expenses, and failed to timely pay wages at the separation of employment, in violation of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 2698, 2699, and 2802, among other Labor Code provisions. He has the same claims as those that the members of the Settlement Class would reasonably be expected to bring based on the course of conduct alleged herein.

35. Plaintiff has also demonstrated that he will aggressively and competently assert the interests of the proposed Settlement Class; he has taken an active role in this litigation and has no apparent conflicts with other class members.

Settlement of Claims Pursuant to Labor Code § 2699 *et seq.* (PAGA)

36. Concurrently with the filing of this Motion, Plaintiff's counsel is transmitting the Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor Code § 2699(1)(2).

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 28th day of January, 2022 at Calabasas, California.

Daniel F. Gaines
DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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Attorneys for Defendant Arm and J Corporation
Db a Puente Hills Chrysler Dodge Jeep Ram

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SAMUEL PLACENCIA, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

ARM AND J CORPORATION, a California
corporation, dba PUENTE HILLS
CHRYSLER DODGE JEEP RAM, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: 21PSCV00211

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: March 12, 2021

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement") is made and
3 entered into by and between Plaintiff Samuel Placencia ("Placencia" or "Plaintiff" or "Class
4 Representative"), individually and on behalf of all others similarly situated, and Defendant Arm
5 and J Corporation, a California corporation, dba Puente Hills Chrysler Dodge Jeep Ram
6 ("Defendant"), subject to the terms and conditions herein and the Court's approval.

7 **A. Definitions.**

8 1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively
9 referred to herein as "the Parties."

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall
12 be designated as "Class Counsel."

13 3. The "Action" means the case entitled *Samuel Placencia, Plaintiff, v. Arm and J*
14 *Corporation, dba Puente Hills Chrysler Dodge Jeep Ram, And Does 1 Through 10, Inclusive,*
15 *Defendants,* Case No. 21PSCV00211, pending before the Superior Court of the State of California
16 for the County of Los Angeles.

17 4. The "Settlement Class" shall be defined as "all non-exempt employees employed
18 by Defendant in California at any time between March 12, 2017 and October 31, 2021" (the "Class
19 Period"). Defendant represents that this Class contains no more than 420 members who worked no
20 more than 6,800 pay periods during the Class Period.

21 5. Members of the Settlement Class shall collectively be referred to as a "Class
22 Member" or "Class Members." Any Class Member who files a timely request for exclusion, as
23 detailed below, will be excluded from the final Settlement Class.

24 **B. General.**

25 1. On January 5, 2021, Plaintiff exhausted the pre-filing requirements of the Labor
26 Code Private Attorneys General Act of 2004 ("PAGA").

27 2. On or about March 12, 2021, Plaintiff initiated the Action by filing a Complaint,
28 pursuant to PAGA, on behalf of himself and all other aggrieved employees. The First Amended

1 Complaint, attached hereto as Exhibit 3 and which will be filed as part of the settlement approval
 2 process, asserts direct class and representative action claims against Defendant for (1) failure to
 3 pay all minimum wages and overtime wages (Labor Code § 510 and 1194); (2) failure to provide
 4 rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 4-2001); (3)
 5 failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, and 512;
 6 IWC Wage Order 4-2001); (4) knowing and intentional failure to comply with itemized employee
 7 wage statement provisions (Labor Code §§ 226(a), (e), (h)); (5) failure to timely pay wages due at
 8 separation of employment (Labor Code §§ 201-203); (6) failure to reimburse employee business
 9 expenses (Labor Code § 2802); (7) violation of Business and Professions Code § 17200; and (8)
 10 penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-203, 226(a), 226.3,
 11 226.7, 510, 512, 558, 1194, and 2802. (the "First Amended Complaint").

12 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
 13 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
 14 purpose other than this settlement. Defendant contends that it has complied at all times with the
 15 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
 16 certification would be inappropriate because Plaintiff is not an adequate class representative,
 17 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
 18 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
 19 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)
 20 shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not
 21 be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal,
 22 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
 23 or evidence of the appropriateness of these or similar claims for class certification in the Action or
 24 with respect to any other proceeding.

25 4. The Class Representative contends that Defendant violated the California Labor
 26 Code and that this case is appropriate for class certification.

27 5. Class Counsel represent that they have conducted a thorough investigation into the
 28 facts and law during the prosecution of this class action case, including the exchange of extensive

1 informal discovery and the review and verification of statistical data and other facts and information
2 provided by Defendant. Counsel for the Parties also represent that they have investigated the
3 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
4 potential defenses thereto, and the damages claimed by Plaintiff.

5 6. On October 4, 2021, following their exchange of information regarding the
6 Settlement Class and the claims and defenses asserted by the Parties, counsel for the Parties
7 engaged in arm's-length negotiations with the help of the well-known mediator, Marc J. Feder,
8 Esq., to reach the basic terms of this Settlement.

9 7. Based on their own independent investigation and evaluation, Class Counsel are of
10 the opinion (and will so represent to the Court) that settlement for the consideration and on the
11 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
12 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
13 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
14 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
15 that this settlement is fair and in the best interest of the Settlement Class.

16 8. The Parties agree that the settlement class described herein may be certified for
17 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
18 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
19 approved, the certification will have no force or effect and will immediately be revoked. The
20 Parties further agree that certification for purposes of the settlement is in no way an admission that
21 class certification is proper under the more stringent standard applied for litigation and that
22 evidence of this limited stipulation for settlement purposes only will not be admissible for any
23 purpose in this or any other proceeding.

24 **C. Terms of Settlement.**

25 1. The financial terms of the settlement are as follows:

26 (a) **Gross Settlement Amount:** The Parties agree to settle this Action for
27 Defendant's payment of the Gross Settlement Amount of Three Hundred Sixty-Six Thousand
28 Seven Hundred Eighty-Eight U.S. Dollars (\$366,788.00) ("the Gross Settlement Amount"). The

1 Gross Settlement Amount includes the attorneys' fees of Class Counsel, litigation costs and
2 expenses (which includes, without limitation, all such fees and costs incurred to date, as well as
3 such fees and costs to be incurred in documenting the settlement, providing any notices required as
4 part of the settlement, securing Court approval of the settlement, and obtaining judgment in the
5 Action), the enhancement payment to the Class Representative, as approved by the Court, the
6 payment to the LWDA pursuant to the PAGA claims in the Action, and all costs of administration,
7 including, without limitation, settlement administration fees and expenses. Defendant shall pay all
8 employer payroll tax obligations due on wage payments made from the Net Settlement Sum in
9 addition to, and separate and apart from, the Gross Settlement Amount.

10 (b) **Net Settlement Sum:** "Net Settlement Sum" is defined as the Gross
11 Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees and
12 documented litigation costs and expenses incurred or advanced by Class Counsel, the general
13 release payment to the Class Representative, the payment to the LWDA pursuant to PAGA, and
14 the costs of administering the settlement.

15 (c) **Calculation of the Individual Settlement Payments:** "Individual
16 Settlement Payments" means the portion of the Net Settlement Sum distributable to each Class
17 Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion
18 form). The Individual Settlement Payments will be calculated by dividing the Net Settlement Sum
19 by the total weeks worked by all participating Class Members in California in a non-exempt
20 position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall
21 be multiplied by the number of weeks each individual participating Class Member worked for
22 Defendant in California in a non-exempt position during the Class Period to yield their Individual
23 Payment Amount. Each Participating Settlement Class Member who does not opt out will receive
24 an Individual Payment Amount.

25 i. For tax purposes, each Individual Payment Amount will be
26 apportioned (a) 10% to wages (reported on an IRS Form W-2 and subject to applicable
27 withholdings); (b) 65% to penalties (reported on an IRS Form 1099); and 25% to interest (reported
28

1 on an IRS Form 1099). All Individual Settlement Payments paid to Class Members will be subject
2 to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

3 (d) **PAGA Payments:** The Parties agree that Twenty Thousand Dollars
4 (\$20,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this
5 amount, Seventy-Five Percent (75%), or Fifteen Thousand Dollars (\$15,000.00) shall be paid to
6 the LWDA, and Twenty-Five Percent (25%), or Five Thousand Dollars (\$5,000.00) shall be paid
7 to Class Members who have not submitted a valid and timely Request for Exclusion Form as part
8 of the Net Settlement Sum.

9 (e) **Enhancement Payment to Class Representative:** The amount awarded to
10 the Class Representative as an enhancement payment and in exchange for his general release of all
11 claims will be set by the Court in its discretion, not to exceed 10,000.00. As a condition to receiving
12 the Incentive Award, Class Representative shall sign a Civil Code section 1542 release of all claims,
13 including individual claims, if any, against Defendant. This amount will be deducted from the
14 Gross Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his
15 enhancement payment. Defendant agrees not to dispute or otherwise object to the enhancement
16 payment if Plaintiff requests \$10,000 or less. If Court approval is not granted as to the enhancement
17 payment, then Plaintiff must reduce his enhancement payment to comport with the amount allowed
18 by the Court (either directly or following appeal, if any).

19 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
20 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
21 the settlement award that has been made available for the Settlement Class by the efforts of Class
22 Counsel. The amount awarded shall not exceed 35% of the Gross Settlement Amount (i.e.
23 \$128,375.80). An IRS Form 1099 will be issued to Class Counsel with respect to its award of
24 attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
25 requested by Class Counsel so long as the request does not exceed \$128,375.80. If Court approval
26 is not granted as to the fees, then Plaintiff's counsel must reduce their fee demand to comport with
27 the amount allowed by the Court (either directly or following appeal, if any).

1 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
2 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
3 litigation costs and expenses, not to exceed 12,000.00. An IRS Form 1099 will be issued to Class
4 Counsel with respect to its award of costs and expenses. Defendant agrees not to dispute or
5 otherwise object to the attorneys' cost award requested by Class Counsel so long as the request
6 does not exceed \$12,000. If Court approval is not granted as to the costs, then Plaintiff's counsel
7 must reduce their cost demand to comport with the amount allowed by the Court (either directly or
8 following appeal, if any).

9 (h) **Settlement Administration Costs:** The fees and other charges of the
10 Settlement Administrator to administer the Settlement are expected to total no more than 7,500.00,
11 and will be paid from the Gross Settlement Amount. These fees shall include any costs associated
12 with the required tax reporting on any Individual Settlement Payments, and the issuing of any and
13 all W-2 and 1099 forms. Subject to approval of the Court, the Parties have agreed that Phoenix
14 Settlement Administrators will serve as a neutral third-party claims' administrator ("Settlement
15 Administrator") to perform all acts related to providing notice to the Settlement Class. Settlement
16 Administrator shall be responsible for (a) printing and distributing the Court-approved Notice of
17 Class Action Settlement ("Class Notice") to all Class Members; (b) administering the settlement;
18 (c) processing exclusions and objections; (d) resolving disputes; (e) distributing the Gross
19 Settlement Amount as directed by the Court and set forth herein; (f) tax reporting; (g) providing
20 necessary weekly status reports; and (h) other duties and responsibilities set forth herein.

21 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
22 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
23 makes no representations regarding tax obligations or consequences, if any, related to this
24 Settlement Agreement.

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D. Release of Claims.

1. Upon the Effective Date, Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and each of its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assigns ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period. "Released Claims" are all claims and allegations asserted in the Action, including all claims for unpaid wages, meal and rest period premiums/wages, inaccurate wage statements, failure to reimburse expenses, and waiting time penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1194 and 2802, the applicable Industrial Wage Commission Wage Order, and PAGA and Business and Professions Code section 17200 as they relate to the underlying Labor Code claims referenced above, which arose during employment in a non-exempt position in California during the Class Period.

2. With respect to the Released Claims, Plaintiff for himself only (and not the other Settlement Class Members) and his assigns, heirs, successors and personal representatives expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code as to the Released Claims. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

3. Plaintiff acknowledges that he has not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out

1 of or in any way whatsoever pertaining to this Litigation, including without limitation, any claim
2 for benefits, proceeds or value under the Litigation.

3 4. Each and every Settlement Class Member who has not submitted a timely and valid
4 opt-out request shall be permanently enjoined and forever barred from prosecuting any and all
5 Released Claims against the Released Parties.
6

7 **E. Notice and Exclusion Process.**

8 1. Within twenty (20) calendar days after entry of the order granting preliminary
9 approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all
10 Class Members, including their last known addresses, telephone numbers, social security numbers,
11 and their dates of employment in a non-exempt position in California during the Class Period
12 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
13 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All
14 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
15 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
16 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
17 storage, custody, use, and/or dissemination of the confidential information. Such information must
18 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

19 2. A notice of pendency of class action, proposed settlement and hearing date for Court
20 approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the Court,
21 shall be sent by the Settlement Administrator to the Class Members, by first class mail, within thirty
22 (30) calendar days after entry of the order granting preliminary approval. Attached to the Class
23 Notice will be a request for exclusion form ("Request for Exclusion Form") in the form attached
24 hereto as Exhibit 2.

25 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
26 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
27 presumed that if an envelope has not been returned within forty-five (45) days of the mailing that
28

1 the Class Member received the Class Notice. In the event of returned or non-deliverable notices,
2 the Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
3 notices.

4 4. Each Class Member will be fully advised of the settlement, the ability to object to
5 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
6 inform the Class Members of the Court-established deadlines for filing objections and a Request
7 for Exclusion Form.

8 5. Each Class Notice will contain personalized information setting forth the number of
9 weeks each Class Member worked for Defendant in California in a non-exempt position during the
10 Class Period and their estimated Individual Payment Amount. To the extent a Class Member
11 disputes any of the information listed on his or her Class Notice, the Class Member may produce
12 evidence to the Settlement Administrator showing such information the Class Member contends
13 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
14 however, and the Settlement Administrator's decision on these matters will be final. The Class
15 Notice will also set forth IRS W-9 information if required.

16 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
17 to receive an Individual Payment Amount, which shall be mailed to them if and when the Effective
18 Date occurs.

19 7. In order to elect not to participate in the Settlement, a Class Member must submit a
20 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
21 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
22 Class Members, unless the Court requires a longer period, in which case the Court ordered
23 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
24 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
25 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
26 next day on which the U.S. Postal Service is open.

27 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
28 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."

1 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
2 on which the U.S. Postal Service is open.

3 9. The Settlement Administrator will search for additional addresses on returned mail
4 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
5 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
6 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
7 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
8 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
9 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
10 Settlement Administrator will search using the social security number for a more current address.
11 If no address is found within 10 days, no further action is required.

12 10. The Settlement Administrator will notify the Parties of the total number of valid
13 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
14 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
15 and Request for Exclusion Forms to Class Members).

16 11. In order to object to the settlement, a Class Member must mail his or her objection
17 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
18 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
19 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
20 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
21 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
22 extended for any reason.

23 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
24 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
25 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
26 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
27 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
28

1 listing the amount of all payments to be made to each Class Member without names or personal
2 identifying information.

3 13. Defendant shall deposit the Gross Settlement Amount with the Settlement
4 Administrator no later than ten (10) calendar days after the Effective Date. The effective date of
5 this Settlement Agreement ("Effective Date") is the date the Court signs an order granting final
6 approval of the settlement and entering judgment thereon. If objections to the settlement are filed
7 and not withdrawn, the Effective Date of the settlement is the sixty-fifth (65th) day after notice of
8 the final approval order is mailed, unless an appeal is filed, in which case the Effective Date is the
9 day after (a) the settlement is upheld by the Court of Appeals, or (b) all appeals are dismissed.

10 14. The Settlement Administrator shall disburse the Gross Settlement Amount within
11 ten (10) calendar days after its receipt thereof. Class Members must cash each of their Individual
12 Payment Amount checks within one hundred eighty (180) calendar days after they are mailed by
13 the Settlement Administrator. The value of any checks uncashed more than one hundred eighty
14 (180) days after mailing shall be paid to the State of California State Controller's Office, to be held
15 in the name of the respective Class Member.

16 **F. Duties of the Parties Prior to Court Approval.**

17 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
18 Court for preliminary approval of this settlement and entry of an order accomplishing the
19 following:

- 20 (a) scheduling a fairness hearing on the question of whether the proposed
21 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
22 (b) approving as to form and content the proposed Class Notice;
23 (c) approving as to form and content the proposed Request for Exclusion
24 Form;
25 (d) preliminarily certifying the Settlement Class for purposes of settlement;
26 (e) preliminarily approving the PAGA payment of \$15,000 to the LWDA;
27 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
28 (g) preliminarily setting the enhancement payment to the Class Representative;

1 (h) preliminarily approving Phoenix Settlement Administrators as the
2 Settlement Administrator and its estimated fees and costs of \$7,500.

3 (i) Permitting Plaintiff to file the First Amended Complaint.
4

5 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
6 of Plaintiff's unopposed motion for preliminary approval of the settlement.

7 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

8 1. In connection with the hearing on final approval of the settlement provided for in
9 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
10 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
11 by the Court):

12 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
13 and adequate, and directing consummation of its terms and provisions;

14 (b) approving Class Counsel's application for an award of attorneys' fees and
15 reimbursement of documented litigation costs and expenses, the enhancement payment to the
16 Class Representative, the payment to the LWDA, and the costs of administering the settlement;
17 and

18 (c) Entering judgment in this Action in accordance with this Stipulation,
19 pursuant to Cal. Rules of Court, Rule 3.769(h).

20 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
21 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
22 on final approval (unless otherwise ordered by the Court).

23 **H. Miscellaneous Provisions:**

24 1. **Voiding the Agreement.**

25 A failure of the Court to approve any material condition of this Settlement Agreement which
26 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
27 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
28 and unenforceable as to all Parties herein at the option of any Party.

1 2. **Parties' Authority.**

2 The signatories hereto represent that they are fully authorized to enter into this Settlement
3 Agreement and bind the Parties hereto to the terms and conditions hereof.

4 3. **Mutual Full Cooperation.**

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

14 4. **No Prior Assignments.**

15 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
16 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
17 entity any portion of any liability, claim, demand, action, cause of action or rights released and
18 discharged by this Stipulation of Settlement.

19 5. **No Admission.**

20 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
21 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
22 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
23 Settlement Agreement with the intention of avoiding further disputes and litigation with the
24 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
25 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
26 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
27 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

28 \\

1 **6. Notices.**

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

6 **To Plaintiff and the Settlement Class:**

7 Daniel F. Gaines, Esq.
8 Alex P. Katofsky, Esq.
9 GAINES & GAINES, APLC
10 27200 Agoura Road, Suite 101
11 Calabasas, CA 91301

12 **To Defendant:**

13 Michael K. Perkins, Esq.
14 David J. Reese, Esq.
15 Kevin Holloway, Esq.
16 FINE, BOGGS & PERKINS LLP
17 111 West Ocean Blvd., Suite 2400
18 Long Beach, California 90802

19 **7. Construction.**

20 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
21 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
22 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
23 any Party or his or its counsel participated in the drafting of this Settlement Agreement.

24 **8. Captions and Interpretations.**

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

29 **9. Modification.**

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

1 the Parties hereto on their attorneys.

2 10. **Integration Clause.**

3 This Settlement Agreement contains the entire agreement between the Parties relating to
4 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
5 understandings, representations, and statements, whether oral or written and whether by a Party or
6 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
7 writing.

8 11. **Binding on Assigns.**

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

11 12. **Governing Law.**

12 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
13 according to the laws of the State of California, without giving effect to any conflict of law
14 principles or choice of law principles.

15 13. **Signatures of All Class Members Unnecessary to be Binding.**

16 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
17 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
18 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
19 provided herein and such shall have the same force and effect as if this Settlement Agreement was
20 executed by each Class Member.

21 14. **Counterparts.**

22 This Settlement Agreement may be executed in counterparts, and when each Party has
23 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
24 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
25 Agreement, which shall be binding upon and effective as to all Parties.

26 15. **Confidentiality**

27 Until Plaintiff files his motion for preliminary approval of the class action settlement, the
28 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the

1 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
2 agencies, or as otherwise required by law.

3 **16. No Publicity**

4 Plaintiff and his Counsel will not contact the media about the settlement or respond to any
5 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
6 settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not post any
7 information about the settlement on social media or their firms' websites.

8 **17. Escalator Provision re: Representation Regarding Class Size.**

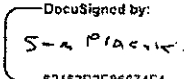
9 Defendant has represented to Plaintiff and his counsel that the Settlement Class includes no
10 more than 420 individuals who worked 6,800 pay periods during the Class Period. Should that
11 representation be incorrect and the final total Class Members and pay periods exceed 420
12 individuals and 6,800 pay periods by ten (10) percent, then Plaintiff may terminate this Agreement
13 unless Defendant agrees to increase the Gross Settlement Amount on a pro rata basis based on the
14 proportionate increase (with the larger percentage increase controlling).
15

16 **18. Election to Vacate the Settlement**

17 If more than ten percent (10%) of the Class Members collectively timely request exclusion,
18 Defendant shall have the option, in their sole discretion, and notwithstanding any other provisions
19 of this Agreement, to withdraw from the Agreement in its entirety, whereupon the Agreement shall
20 be null and void for any and all purposes. If Defendant elects to exercise its rights under this
21 provision, it will so notify Class Counsel and the Court in writing no later than ten (10) business
22 days after receiving written notice via overnight delivery from the Settlement Administrator of the
23 number of opt-outs.
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December 13, 2021

Dated: December ____, 2021

By: 
DocuSigned by:
S-A Placencia
62162D2E86674F4
SAMUEL PLACENCIA
Plaintiff and Class Representative

Dated: December ____, 2021

ARM AND J CORPORATION

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: December 14, 2021

GAINES & GAINES, APLC

By: 
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

Dated: December ____, 2021

FINE, BOGGS & PERKINS LLP

By: _____
Michael K. Perkins, Esq.
David J. Reese, Esq.
Kevin Holloway, Esq.
Counsel for Defendant

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Dated: December ____, 2021

By:

SAMUEL PLACENSIA
Plaintiff and Class Representative

Dated: December 13, 2021

ARM AND J CORPORATION

By:

Its:

Alex Hwang
President

APPROVED AS TO FORM AND CONTENT:

Dated: December ____, 2021

GAINES & GAINES, APLC

By:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

Dated: December 13, 2021

FINE, BOGGS & PERKINS LLP

By:

Michael K. Perkins
Michael K. Perkins, Esq.
David J. Reese, Esq.
Kevin Holloway, Esq.
Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SAMUEL PLACENSIA, on behalf of himself
and all "aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*

Plaintiff,

v.

ARM AND J CORPORATION, a California
corporation, dba PUENTE HILLS CHRYSLER
DODGE JEEP RAM, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 21PSCV00211

Assigned to the Hon. Peter A. Hernandez, Dept. O

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$366,788 to pay claims to all current and former non-exempt California employees of Defendant Arm and J Corporation, a California corporation, dba Puente Hills Chrysler Dodge Jeep Ram ("Defendant") employed from March 12, 2017 through October 31, 2021.
- The settlement resolves a lawsuit over whether Defendant failed to pay all minimum wages and overtime wages; provide meal and rest periods or compensation in lieu thereof; timely issued wages upon separation of employment; issued accurate and complete wage statements; and failed to reimburse employee business expenses. It avoids costs and risks to you from continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$128,375.80 as attorneys' fees and \$12,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Arm and J Corporation about the legal claims that were brought in this case.
Object	Write to the Court about why you don't like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On March 12, 2021, Plaintiff Samuel Placencia filed this lawsuit in the Los Angeles County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code. The Lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant employed from March 12, 2017 through October 31, 2021 ("Class Period"). The lawsuit alleges that members of the Class were not paid all minimum wages and overtime wages; were not provided all meal and rest periods or compensation in lieu thereof; were not timely issued wages upon separation of employment; were not issued accurate and complete wage statements; and were not reimbursed for all business expenses they incurred. It seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys' fees and costs. Defendant denies all of the material allegations in the Lawsuit.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301
Phone: (866) 550-0855

Defendant's Attorneys

Michael K. Perkins, Esq.
David J. Reese, Esq.
Kevin Holloway, Esq.
FINE, BOGGS & PERKINS LLP
111 West. Ocean Blvd., Suite 2400
Long Beach, CA 90802

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff's Attorneys think the settlement is fair, reasonable and adequate and in the best interests of all Class members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all current and former non-exempt California employees of Defendant employed from March 12, 2017 through October 31, 2021.

C. What does the Settlement provide?

1. Gross Settlement Amount.

Defendant will pay \$366,788 (the "Gross Settlement Amount") to settle the lawsuit. The following sums will be paid from the Gross Settlement Amount: (1) \$15,000 to the California Labor and Workforce Development Agency; (2) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$128,375.80 and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$12,000; (3) an enhancement payment to the Class Representative set by the court, not to exceed \$10,000, for his service in the Action; and (4) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$7,500. The amount of the Gross Settlement Amount remaining after these payments is the "Net Settlement Sum."

2. Individual Settlement Payments.

Your share of the Net Settlement Sum will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and each of its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assigns ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period.

"Released Claims" are all claims and allegations asserted in the Action, including all claims for unpaid wages, meal and rest period premiums/wages, inaccurate wage statements, failure to reimburse expenses, and waiting time penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1194 and 2802, the applicable Industrial Wage Commission Wage Order, and PAGA and Business and Professions Code section 17200 as they relate to the underlying Labor Code claims referenced above, which arose during employment in a non-exempt position in California during the Class Period.

E. How Is My Share Of The Settlement Calculated?

Each participating claimant (those who do not opt out of the Settlement) shall receive an "Individual Settlement Payment," which is a portion of the Net Settlement Sum distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Settlement Payment will be calculated by dividing the Net Settlement Sum by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Settlement Payment. Each Participating Settlement Class Member who does not opt out will receive an Individual Settlement Payment.

For tax purposes, each Individual Settlement Payment will be apportioned (a) 10% as wages as (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 65% to penalties (reported on an IRS Form 1099); and 25% to interest (reported on an IRS Form 1099). All Individual Settlement Payment paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [] weeks while employed in a non-exempt position in California from March 12, 2017 through October 31, 2021. Based on these weeks worked, you are entitled to an Individual Settlement Payment of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than . In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on , at a.m., in the Courtroom of Judge Hernandez of the Los Angeles County Superior Court, Department O, located at 400 Civic Center Plaza, Pomona, California 91766. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

• OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING

TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator's address is [Settlement Administrator address].

• **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Objections must be postmarked no later than _____.

• **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Los Angeles County Superior Court, located at 400 Civic Center Plaza, Pomona, California 91766.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number] or Arm and J Corporation Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS Samuel Placensia, Plaintiff, v. Arm and J Corporation, a California corporation, dba Puente Hills Chrysler Dodge Jeep Ram, And Does 1 Through 10, Inclusive, Defendants, Los Angeles County Superior Court, Case No. 21PSCV00211. IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.

I confirm that I was employed by Defendant Arm and J Corporation, a California corporation, dba Puente Hills Chrysler Dodge Jeep Ram as a non-exempt employee in California during the period from March 12, 2017 through October 31, 2021.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

Last four digits of Social Security Number: XXX-XX-_____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE [45 days after mailing of Notice]. Send this signed request for exclusion form to the Settlement Administrator:

Arm and J Corporation Settlement Administrator
c/o _____

EXHIBIT 3

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Attorneys for Plaintiff Samuel Placensia, on behalf of himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - POMONA COURTHOUSE SOUTH

SAMUEL PLACENSIA, on behalf of himself
and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

ARM AND J CORPORATION, a California
corporation, dba PUENTE HILLS
CHRYSLER DODGE JEEP RAM, and DOES
1 through 10, inclusive,

Defendants.

CASE NO: 21PSCV00211

*Assigned to the Hon. Peter A. Hernandez,
Dept. O*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY ALL MINIMUM
WAGES AND OVERTIME WAGES
(LABOR CODE §§ 510 AND 1194; IWC
WAGE ORDER 4-2001)**
- 2. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 4-2001)**
- 3. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 510
AND 1194; IWC WAGE ORDER 4-2001)**
- 4. FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802)**
- 4. FAILURE TO ISSUE ACCURATELY
ITEMIZED WAGE STATEMENTS
(LABOR CODE §§ 226(a) AND 226(e))**
- 5. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

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**6. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7,
510, 512, 1194, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

Complaint Filed: March 12, 2021

DEMAND FOR JURY TRIAL

Plaintiff SAMUEL PLACENSIA ("Plaintiff"), individually and, on behalf of all similarly situated individuals (the "Class" or "Plaintiff Class"), on behalf of the general public, and as an "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, complains of Defendants Arm and J Corporation, a California corporation, dba Puente Hills Chrysler Dodge Jeep Ram, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and Class Members (Defendants' non-exempt California employees who worked in California from March 12, 2017 through October 31, 2021) ("Aggrieved Employees").

2. For at least four (4) years to the filing of this action and continuing to the present (the "liability period"), Defendants have had consistent policies of failing to pay all minimum and overtime wages earned during the course of employment, failing to provide meal and rest periods, or compensation in lieu thereof; failing to reimburse business expenses; failing to issue accurately itemized wage statements, and failing to pay all wages upon separation of employment.

3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to Labor Code §§ 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1194, and 2802, seeking compensation for all unpaid minimum wages and overtime wages, premium wages for missed and denied meal and rest periods, statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

3 5. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
4 The Labor Code violations alleged against Defendants herein arose in Los Angeles County,
5 California.

PARTIES

A. Plaintiff

9 6. Plaintiff SAMUEL PLACENSIA was employed by Defendants from January 2018
10 through September 2020 as non-exempt employee in Los Angeles County, California.

11 7. During his work with Defendants, Plaintiff was:

- 12 a. Denied the payment of all minimum wages and overtime wages;
- 13 b. Denied rest periods or compensation in lieu thereof;
- 14 c. Denied meal periods or compensation in lieu thereof;
- 15 d. Denied accurately itemized wage statements;
- 16 e. Denied the reimbursement of business expenses; and
- 17 f. Denied the timely payment of wages upon separation of his employment

18 B. Defendant

19 8. Defendant ARM AND J CORPORATION is a California corporation doing business
20 as PUENTE HILLS CHRYSLER DODGE JEEP RAM. Defendant ARM AND J CORPORATION
21 employed Plaintiff and Aggrieved Employees throughout the State of California, including Los
22 Angeles County, California.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
2 designated hereinafter as DOES when such identities become known.

3 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
4 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
5 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
6 attributable to the other Defendants.

7 11. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
8 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
9 provisions of the California Labor Code as alleged herein.

10 **III.**

11 **CLASS ACTION ALLEGATIONS**

12 12. Plaintiff brings this action on behalf of himself and all others similarly situated as a
13 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
14 following class composed of and defined as follows:

15 **THE CLASS**

16 All of Defendants' non-exempt employees who worked in California
17 from March 12, 2017 through October 31, 2021.

18 13. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
19 modify this class description with greater specificity or further division into subclasses or limitation
20 to particular issues.

21 14. This action has been brought and may properly be maintained as a class action under
22 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
23 interest in the litigation and the proposed Class is easily ascertainable.

24 **A. Numerosity**

25 15. The potential members of the Class as defined are so numerous that joinder of all the
26 members the Class is impracticable. While the precise number of members of the Class has not been
27 ascertained at this time, Plaintiff is informed and believes, and based thereon allege, that Defendants
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1 currently employ, and during the relevant time periods employed, at least 420 persons in the State of
2 California who fall within the Class definition.

3 16. Accounting for employee turnover during the relevant period necessarily increases this
4 number. Plaintiff alleges Defendants' employment records would provide information as to the
5 number and location of members of the Class. Joinder of members of the Class is not practicable.

6 **B. Commonality**

7 17. There are questions of law and fact common to the Class that predominate over any
8 questions affecting only individual Class Members. These common questions of law and fact include,
9 without limitation:

- 10 a. Whether Defendants failed to pay Plaintiff and Class Members all minimum
11 wages and overtime wages, in violation of Labor Code §§ 510 and 1194;
- 12 b. Whether Defendants failed to properly provide rest periods or compensation in
13 lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
14 226.7, 510 and 1194, and IWC Wage Order 4-2001;
- 15 c. Whether Defendants failed to properly provide meal periods or compensation
16 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
17 226.7, and 512, and IWC Wage Order 4-2001;
- 18 d. Whether Defendants failed to provide Plaintiff and Class Members with
19 accurately itemized wage statements, in accordance with Labor Code § 226(a)
20 and (e);
- 21 e. Whether Defendants failed to reimburse Plaintiff and Class Members for all
22 out-of-pocket business expenses, in violation of Labor Code § 2802;
- 23 f. Whether Defendants failed to timely pay Plaintiff and Class Members all
24 wages due and owing at the separation of their employment, in violation of
25 Labor Code §§ 201-203; and
- 26 g. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
27 to Business & Professions Code § 17200 *et seq.*

28 III

C. Typicality

18. The claims of the named Plaintiff are typical of the claims of members of the Class. Plaintiff and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

19. Plaintiff will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

20. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

21. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL MINIMUM WAGES AND OVERTIME WAGES

(LABOR CODE §§ 510 AND 1194)

22. Plaintiff incorporates paragraphs 1 through 21 of this Complaint as though fully set forth herein.

23. Labor Code § 510 provides that, "any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Labor Code § 1194 provides that "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

24. Defendants paid Plaintiff and Class Members piece-rate, commission and bonus wages. However, some tasks had no compensable piece-rate or commission unit associated with them, such that they went uncompensated. This includes rest periods, which must be separately paid; however, Defendants failed to provide compensated rest periods and denied rest periods altogether. Plaintiff and Class Members are not compensated for all hours worked (and thus, all minimum wages due) when they perform tasks for which no piece-rate or commission is associated, including rest periods. This violates Labor Code §§ 510, 1194, and 1194.2;

25. As a result of the unlawful acts of Defendants in willfully failing to pay all minimum wages and overtime wages, Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs pursuant to Labor Code § 1194, and liquidated damages as authorized by Labor Code § 1194.2.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7, 510 AND 1194 AND IWC WAGE ORDER 4-2001)

26. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set forth herein.

27. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code §§ 226.7 and IWC Wage Order 4-2001.

28. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code §§ 226.7, 510, and 1194, and IWC Wage Order 4-2001. Defendants paid Plaintiff and Class Members on a bonus/commission/piece-rate basis for completing and performing certain tasks. However, some tasks had no compensable bonus/commission/piece-rate unit associated with that task, such that those tasks went uncompensated, including rest periods, which must be separately paid. Plaintiff and Class Members are entitled to all wages due for unpaid rest periods. Plaintiff and Class Members were also denied off-duty, paid rest periods altogether, but were never paid rest period premium wages as a result. This violates Labor Code §§ 226.7, 510, and 1194 and IWC Wage Order 4-2001;

29. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all rest period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 510, 512, AND 1194 AND IWC WAGE ORDER 4-2001)

30. Plaintiff incorporates paragraphs 1 through 29 of this Complaint as though fully set forth herein.

31. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7, 512 and IWC Wage Order 4-2001.

32. Defendants failed premium wages for missed meal periods, in violation of Labor Code §§ 226.7, 512 and IWC Wage Order 4-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked over five hours in duration, or second, uninterrupted, 30-minute meal period for every shift worked over ten hours in duration, but were not paid premium wages of one hour's pay for each missed meal period. When they did receive a meal period, they would typically be interrupted and required to go back to work or would simply clock out for their meal period and continue working, without compensation. As a result, Plaintiff and Class Members are entitled to meal premium wages for each non-compliant meal period and unpaid minimum and overtime wages for all uncompensated time during off-the-clock meal periods. This violates Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 4-2001.

33. Pursuant to Labor Code §§ 226.7, 512 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all meal period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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VII.
FOURTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE §§ 226(a), (e))

34. Plaintiff incorporates paragraphs 1 through 33 of this Complaint as though fully set forth herein.

35. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

36. Plaintiff and Class Members were not paid all minimum wages, overtime wages, and meal and rest period premium wages due. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3;

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IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)

42. Plaintiff incorporates paragraphs 1 through 41 of this Complaint as though fully set forth herein.

43. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

44. Plaintiff and Class Members were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Class Members no longer employed by Defendants.

45. More than 30 days have passed since Plaintiff and certain Class Members have left Defendants' employ.

46. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and certain Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

47. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as though fully set forth herein.

48. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

49. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

50. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

51. Wage and hour laws express fundamental public policies. Properly providing employees with all wages and expense reimbursement due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

52. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
2 guaranteed to all employees under law.

3 53. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
4 §17200 *et seq.* of the Business & Professions Code.

5 54. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
6 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
7 17200 *et seq.* of the Business & Professions Code.

8 55. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
9 similarly situated have been damaged in a sum as may be proven.

10 56. Unless restrained by this Court, Defendants will continue to engage in the unlawful
11 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
12 should make such orders or judgments, including the appointment of a receiver, as may be necessary
13 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
14 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
15 to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the
16 money Defendants have unlawfully failed to pay.

17 **XI.**

18 **EIGHTH CAUSE OF ACTION**

19 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
20 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**
21 **CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO LABOR**
22 **CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

23 57. Plaintiff incorporates paragraphs 1 through 56 of this Complaint as though fully set
24 forth herein.

25 58. As a result of the acts alleged above, including the Labor Code violations set forth in
26 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

27 59. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
28 penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, 1194, and 2802; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

60. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

61. On January 5, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of January 5, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

XII.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid minimum wages and overtime wages due to Plaintiff and Class Members;

2. For liquidated damages pursuant to Labor Code § 1194.2;

3. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;

4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;

5. For penalties pursuant to Labor Code §§ 203 for Plaintiff and Class Members who are no longer employed by Defendants;

1 6. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
2 Aggrieved Employees;

3 7. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
4 and other applicable law;

5 8. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
6 law; and

7 9. Such other and further relief as this Court may deem just and proper.

8 Dated: December 9, 2021

Respectfully submitted,

9 GAINES & GAINES
10 A Professional Law Corporation

11 By: 
12 DANIEL F. GAINES
13 EVAN S. GAINES
14 Attorneys for Plaintiff