

Electronically Received 03/11/2022 11:35 AM

1 Thomas M. Diachenko (SBN 140763)
2 Law Offices of Thomas M. Diachenko, APC
3 1916 Third Avenue
4 San Diego, CA 92101
5 Telephone: 619-699-5870
6 Facsimile: 619-699-5871

7 Rory K. Pendergast (SBN 266765)
8 Christopher C. Taylor (SBN 200156)
9 The Pendergast Law Firm, PC
10 3019 Polk Avenue
11 San Diego, CA 92104
12 Telephone: 619-344-8699
13 Facsimile: 619-344-8701

14 Ross I. Quient (SBN 304915)
15 The Law Offices of Ross Quient
16 19528 Ventura Boulevard, Suite 791
17 Tarzana, CA 91356
18 Telephone: 949-338-8869

19 Attorneys for Plaintiffs Christopher Gearhart and Christopher Williams

20 Esra Hudson (SBN
21 Manatt, Phelps & Phillips, LLP
22 2049 Century Park East, Suite 1700
23 Los Angeles, CA 90067
24 Telephone: 310-312-4381
25 Facsimile: 310-914-5744

26 Attorneys for Defendants Cabling Solutions of Rutherford County, LLC,
27 Matt Brown, and Lori Brown

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

CHRISTOPHER GEARHART, an individual;) Case No.: 21STCV07228
CHRISTOPHER WILLIAMS, an individual;)

) ~~PROPOSED~~ ORDER
Plaintiffs,) **APPROVING PAGA SETTLEMENT**

v.)
) Complaint Filed: February 23, 2021

CABLING SOLUTIONS OF RUTHERFORD) Trial Date: None Set
COUNTY, LLC, et al.;) Judge: Hon. Richard Burdge
) Dep't.: 37

Defendants.)
)

1 **[PROPOSED] ORDER**

2 On or about January 24, 2022, Plaintiffs Christopher Gearhart and Christopher Williams
3 (“Plaintiffs”) and Defendants Cabling Solutions of Rutherford County, LLC, Matt Brown, and Lori
4 Brown (collectively “Defendants”) (Plaintiffs and Defendants are collectively referred to as “the Parties”),
5 by and through their respective attorneys of record, filed a stipulation and request that the Court enter an
6 Order Granting Approval of the Settlement of Claims Brought Under the Private Attorneys General Act
7 (“Stipulation”). A copy of the Parties’ Stipulation is attached hereto as Exhibit A. The Parties’ Settlement
8 Agreement (“PAGA Settlement”) is attached as Exhibit 1 to the Stipulation.

9 On March 11, 2022, the Court conducted a hearing regarding the Parties’ Stipulation and the
10 PAGA Settlement. Christopher C. Taylor of The Pendergast Law Firm, PC and Ross Quient of The Law
11 Offices of Ross Quient appeared on behalf of Plaintiffs. Esra Hudson of Manatt, Phelps & Phillips, LLP
12 appeared on behalf of Defendants.

13 Having considered the Parties’ submissions, and all legal authorities in support therefore,
14 including the PAGA Settlement, and good cause appearing, IT IS HEREBY ORDERED that the Parties’
15 request is GRANTED, subject to the following findings and orders:

16 1. The Court approves the terms set forth in the PAGA Settlement and finds that the PAGA
17 Settlement is, in all respects, fair, adequate, and reasonable. The Court finds that the Parties were able to
18 reasonably evaluate their respective positions. The Court also finds that PAGA Settlement will avoid
19 additional and potentially substantial litigation costs, as well as delays and risks if the Parties were to
20 continue to litigate the case. The Court directs the Parties to effectuate the PAGA Settlement according to
21 its terms.

22 2. The PAGA Settlement is not an admission by Defendants or any other Released Party,
23 nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendants or any
24 other Released Party. Neither this Order, the Stipulation, the PAGA Settlement, nor any other document
25 referred to herein, nor any action taken to carry out the settlement, may be construed as, or may be used
26 as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against
27 Defendants or any other Released Party.

1 3. Defendants shall pay the Aggrieved Employees pursuant to the procedure described in the
2 PAGA Settlement.

3 4. Any disputes concerning administration of the PAGA Settlement which cannot be
4 resolved by the Parties shall be submitted to and resolved by the Court.

5 5. The Court shall have and retain continuing jurisdiction, pursuant to CCP section 664.6,
6 over this lawsuit to the fullest extent necessary to interpret, enforce, and effectuate the terms and intent of
7 the PAGA Settlement and this Order.

8
9 **IT IS SO ORDERED.**

10 16
11 DATED: March ____, 2022



JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Thomas M. Diachenko (SBN 140763)
 2 Law Offices of Thomas M. Diachenko, APC
 3 1916 Third Avenue
 4 San Diego, CA 92101
 Telephone: 619-699-5870
 Facsimile: 619-699-5871

5 Rory K. Pendergast (SBN 266765)
 6 Christopher C. Taylor (SBN 200156)
 7 The Pendergast Law Firm, PC
 8 3019 Polk Avenue
 San Diego, CA 92104
 Telephone: 619-344-8699
 Facsimile: 619-344-8701

9 Ross I. Quient (SBN 304915)
 10 The Law Offices of Ross Quient
 11 19528 Ventura Boulevard, Suite 791
 12 Tarzana, CA 91356
 Telephone: 949-338-8869

13 Attorneys for Plaintiffs Christopher Gearhart and Christopher Williams

14 Esra Hudson (SBN
 15 Manatt, Phelps & Phillips, LLP
 2049 Century Park East, Suite 1700
 Los Angeles, CA 90067
 Telephone: 310-312-4381
 Facsimile: 310-914-5744

16 Attorneys for Defendant Cabling Solutions of Rutherford County, LLC,
 17 Matt Brown, and Lori Brown

18
 19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 20 **IN AND FOR THE COUNTY OF LOS ANGELES**

21 CHRISTOPHER GEARHART, an individual;) Case No.: 21STCV07228
 22 CHRISTOPHER WILLIAMS, an individual;)

23 Plaintiffs,) **JOINT STIPULATION RE PAGA**
 24 v.) **SETTLEMENT WITH SUPPORTING**
) **EXHIBITS & [PROPOSED] ORDER**
) **APPROVING PAGA SETTLEMENT**

25 CABLING SOLUTIONS OF RUTHERFORD)
 26 COUNTY, LLC, et al.;)

27 Defendants.)
) Complaint Filed: February 23, 2021
) Trial Date: None Set
) Judge: Hon. Richard Burdge
) Dep't.: 37

1 **TO THE COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiffs Christopher Gearhart and Christopher Williams ("Plaintiffs") and Defendants Cabling
3 Solutions of Rutherford County, LLC, Matt Brown, and Lori Brown (collectively "Defendants")
4 (Plaintiffs and Defendants are collectively referred to as "the Parties"), by and through their respective
5 attorneys of record, stipulate and respectfully request the Court enter an Order Granting Approval of the
6 Settlement of Claims Brought Under the Private Attorneys General Act as described below:

7 WHEREAS, the Parties entered into a Settlement Agreement to resolve the claims brought or
8 which could have been brought under the Private Attorneys General Act in the above captioned matter.
9 A true and correct copy of the executed Settlement Agreement is attached as Exhibit 1;

10 WHEREAS, Court approval of the PAGA settlement is required pursuant to Labor Code section
11 2699(1);

12 WHEREAS, Cabling Solutions is a Tennessee limited liability company that is in the business
13 of contracting with California hotels to upgrade and install cabling in California hotels. Plaintiffs' claims
14 against the Hotel Defendants (Embassy Suites by Hilton Arcadia; Hilton San Francisco Financial
15 District aka Justice Operating Company, LLC; Embassy Suites Walnut Creek; Hayes Mansion San Jose,
16 Curio Collection by Hilton; Hilton Franchise Holding, LLC) are under a joint employer theory;

17 WHEREAS, Defendants represent that the number of alleged "aggrieved employees" subject to
18 this Settlement Agreement is approximately 3-4 people per year, who worked on a temporary basis in
19 California for a limited period of time. Employees worked approximately 5 pay periods in 2021 through
20 the date of the Settlement Agreement and 6 pay periods in 2020;

21 WHEREAS, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not
22 required to follow class action procedural rules in PAGA cases and therefore need not obtain approval of
23 a settlement through a motion for preliminary or final approval. (*See also Williams v. Superior Court*
24 (2017) 3 Cal.5th 531, 546-54 7 ("PAGA does not make other potentially aggrieved employees parties or
25 clients of plaintiff's counsel, does not impose on a plaintiff or counsel any express fiduciary obligations,
26 and does not subject a plaintiff or counsel to scrutiny with respect to represent a large class"); *Mendoza v.*
27 *Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1 079 ("PAGA authorizes a representative action without the
need for class certification"); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122-

1 1123 (“[A] PAGA suit is fundamentally different than a class action” in that “PAGA has no notice
2 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action”);

3 WHEREAS, the Parties seek Court approval of the PAGA settlement to resolve this matter in
4 the most efficient manner possible;

5 WHEREAS, upon the entry of a final judgment in this case, each of the Aggrieved Employees
6 (including the named plaintiff), shall, for the period from February 24, 2020, until the Court signs the
7 Order, fully release and forever discharge the claims alleged or which could have been alleged in the
8 above captioned matter (“Lawsuit”) arising during the PAGA period for civil penalties under PAGA for
9 any and all Labor Code violations including all claims that were asserted or could have been asserted in
10 the operative Complaint in this case (“Released Claims”) against Defendants;

11 WHEREAS, counsel for the Parties investigated the factual and legal issues affecting the
12 strengths and weaknesses of Plaintiffs’ claims and potential recovery. Prior to the PAGA settlement,
13 Defendants disclosed information regarding the other potential Aggrieved Employees. The Parties have
14 had open discussions which permitted the Parties to reach a reasoned and informed resolution of this
15 matter;

16 WHEREAS, Plaintiffs contend the alleged violations giving rise to the penalties afforded
17 pursuant to the PAGA, were based primarily upon claims that the two alleged “aggrieved employees”
18 were not paid correctly for overtime hours and were likewise denied meal and rest breaks. Defendants
19 dispute and do not, in any manner, agree that the two employees were improperly paid or were denied
20 breaks;

21 WHEREAS, Plaintiffs, through counsel, believe the settlement for the consideration and on the
22 terms set forth in Exhibit 1 is fair, reasonable, and adequate, and is in the best interests of the aggrieved
23 employees, and the State of California in light of all known facts and circumstances and the risks inherent
24 in litigation. Both Plaintiffs and Defendants’ counsel also believe the settlement amount is in line with
25 comparable PAGA settlements recently approved by courts and at trial. (*See, e.g., Carrington v. Starbuck*
26 *Corp.* (2018) 30 Cal.App.5th 504, 529);

27 WHEREAS, Plaintiffs and their counsel recognize the risks inherent in PAGA actions, including
the court’s discretion to reduce the amount of civil penalties. (*See Thurman v. Bayshore Transit Mgmt.*,

1 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (“[U]nder section 2699, subdivision (e)(2) a trial court may
2 exercise its discretion to award lesser penalties based on the enumerate considerations”) (emphasis in
3 original, internal quotation marks and citations omitted).) Specifically, the trial court may reduce the civil
4 penalty if declining to do so “would result in an award that is unjust, arbitrary, oppressive, or confiscatory
5 based on the facts and circumstances of [the] case.” (Ibid.)

6 WHEREAS, the Parties provided notice of the proposed settlement to the LWDA as required by
7 the PAGA. Attached as Exhibit 2 is a true and correct copy of the e-mail confirmation showing the
8 Parties submitted the proposed PAGA Settlement to the LWDA.

9 WHEREAS, to effectuate the terms of the PAGA Settlement, THE PARTIES STIPULATE
10 AND REQUEST THE COURT ENTER AN ORDER APPROVING THE SETTLEMENT AS
11 FOLLOWS:

12 1. Aggrieved Employees. The “Aggrieved Employees” are all persons who are and/or were
13 employed by Cabling Solutions of Rutherford County, LLC in a California location at any time after
14 February 24, 2020, and the date upon entry of an Order by the Court approving the PAGA settlement.

15 2. PAGA Period. The “PAGA Period” is period from February 24, 2020, through the date of
16 entry of the order approving the PAGA settlement.

17 3. Release of PAGA Claims. The Court finds and orders that Plaintiffs Christopher Gearhart
18 and Christopher Williams on behalf of themselves, the State of California, and the other Aggrieved
19 Employees fully release and forever discharge the claims alleged or which could have been alleged in the
20 Lawsuit arising during the PAGA Period for civil penalties under PAGA for any and all Labor Code
21 violations including all claims that were asserted or could have been asserted in the operative Complaint
22 in this case against all named defendants (Cabling Solutions of Rutherford County, LLC, Lori Brown,
23 Matthew Brown, as well as the following entities: Embassy Suites by Hilton Arcadia; Hilton San
24 Francisco Financial District aka Justice Operating Company, LLC; Embassy Suites Walnut Creek; Hayes
25 Mansion San Jose, Curio Collection by Hilton; Hilton Franchise Holding, LLC, heretofore “Released
26 Defendants”) and their respective present and former officers, directors, owners, members, employees,
27 shareholders, agents, trustees, representatives, attorneys, insurers, customers, parent companies,
subsidiaries, divisions, affiliates, predecessors, successors, assigns, including any individual or entity that

1 could be jointly liable with Cabling Solutions. The Court finds and orders that Plaintiffs and the other
2 Aggrieved Employee are forever barred from pursuing any and all of the released PAGA claims that
3 arose during the PAGA Period. The Released Claims do not include any employee's individual, non-
4 PAGA claims. No persons, other than Plaintiffs shall be barred from bringing individual, non-PAGA
5 claims under the terms of the Settlement set forth in Exhibit 1.

6 4. Fairness, Reasonableness, and Adequacy. The Court hereby finds that the settlement
7 amount of \$2,000.00 as set forth in Exhibit 1 is fair, reasonable, and adequate. The total settlement will be
8 divided as follows: 75%, or \$1,500.00, to the LWDA, and 25%, or \$500.00, to the aggrieved employees.

9 5. Payment to Aggrieved Employees. No later than ten (10) calendar days after the Court's
10 approval, Defendants' counsel will mail checks to each of the aggrieved employees for their pro rata share
11 of the PAGA settlement. Defendants shall send each aggrieved employee a pro rata share of the PAGA
12 settlement based on the number of pay periods that he worked for Defendants in the State of California
13 during the PAGA period, calculated as follows:

14 a. Each aggrieved employee's *individual* number of qualifying pay periods will be
15 divided by the *total* number of qualifying pay periods for *all* aggrieved employees, and the resulting
16 figure will be referred to as the "Multiplier."

17 b. Each aggrieved employee's Multiplier will be applied to the fund to calculate
18 each employee's dollar share.

19 6. Payment to LWDA. Within ten (10) calendar days after the date the Court signs the
20 Approval Order, Defendants shall mail a check to the Law Offices of Thomas M. Diachenko, APC in the
21 amount of One Thousand and Five Hundred Dollars and Zero Cents (\$1,500.000), but made payable to
22 the "California Labor & Workforce Development Agency." Diachenko shall deliver the check to the
23 LWDA.

24 7. Disputes Relating to PAGA Settlement Administration. Any disputes concerning
25 administration of the PAGA Settlement which cannot be resolved by the Parties shall be submitted to and
26 resolved by the Court.

27 ///

///

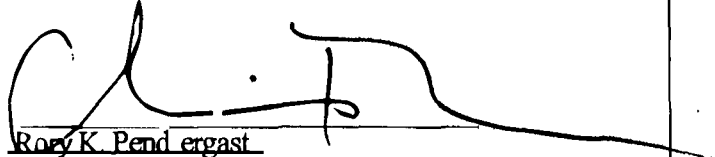
1 8. Effect of Order. Upon entry of the Approval Order, the Parties agree that this Lawsuit
2 will be disposed of and that the PAGA claims against Defendants will be disposed of, to the extent
3 described herein. Without affecting the finality of this Final Order in any way, the Court retains
4 jurisdiction to enforce the terms of the PAGA Settlement.

5 **IT IS SO STIPULATED.**

6 DATE: January 4, 2022

THE PENDERGAST LAW FIRM, PC

7
8 By:



Christopher C. Taylor
Christopher C. Taylor
Attorneys for Plaintiffs

9
10
11 DATE: January 14, 2022

MANATT, PHELPS & PHILLIPS, LLP

12
13 By:



Esra Hudson
Esra Hudson
Attorneys for Defendants

1 [PROPOSED] ORDER

2 Pursuant to Stipulation by the Parties and good cause appearing:

3 Having considered the Parties' submissions, and all legal authorities in support therefore,
4 including the Settlement Agreement ("PAGA Settlement"), attached hereto as Exhibit 1, and good cause
5 appearing, IT IS HEREBY ORDERED that the Parties' request is GRANTED, subject to the following
6 findings and orders:

7 1. The Court approves the terms set forth in Exhibit 1 and finds that the PAGA Settlement is,
8 in all respects, fair, adequate, and reasonable, and directs the Parties to effectuate the PAGA settlement
9 according to its terms. The Court finds that the Parties were able to reasonably evaluate their respective
10 positions. The Court also finds that PAGA Settlement will avoid additional and potentially substantial
11 litigation costs, as well as delays and risks if the Parties were to continue to litigate the case.

12 2. The settlement is not an admission by Defendants or any other Released Party, nor is this
13 Order a finding of the validity of any allegations or of any wrongdoing by Defendants. Neither this Order,
14 the PAGA Settlement, nor any other document referred to herein, nor any action taken to carry out the
15 settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission,
16 concession, or liability whatsoever by or against Defendants.

17 3. Defendants shall pay the Aggrieved Employees pursuant to the procedure described in
18 Exhibit 1.

19 4. Any disputes concerning administration of the PAGA settlement which cannot be
20 resolved by the Parties shall be submitted to and resolved by the Court.

21 5. The Court shall have and retain continuing jurisdiction, pursuant to CCP section 664.6,
22 over this lawsuit to the fullest extent necessary to interpret, enforce, and effectuate the terms and intent of
23 the PAGA settlement and this Order.

24 **IT IS SO ORDERED.**

25 DATED: January __, 2022

26 _____
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (hereinafter "Settlement" or "Agreement") is made and entered into by and between Plaintiffs Christopher Gearhart and Christopher Williams (hereinafter "Plaintiffs"), individually and on behalf of all others similarly situated ("Aggrieved Employees"), on the one hand, and Defendant Cabling Solutions of Rutherford County, LLC ("Cabling Solutions"), Lori Brown and Matthew Brown ("the Browns"), on the other hand. Plaintiffs, Cabling Solutions and the Browns are collectively referred to herein as "the Parties."

I. NATURE OF ACTION

1. On or about February 17, 2021, Plaintiff Christopher Gearhart ("Gearhart") filed a notice with Labor and Workforce Development Agency under the Private Attorney General Act pursuant to Labor Code section 2699, et. seq. ("PAGA Notice"), asserting violations of various Labor Code sections by Cabling Solutions, the Browns, as well as the following entities, which shall heretofore be referred to as the "Hotel Defendants": Embassy Suites by Hilton Arcadia; Hilton San Francisco Financial District aka Justice Operating Company, LLC; Embassy Suites Walnut Creek; Hayes Mansion San Jose, Curio Collection by Hilton; Hilton Franchise Holding, LLC. Collectively, Cabling Solutions, the Hotel Defendants, and Lori Brown and Matt Brown shall heretofore be referred to as "Defendants". A true and correct copy of the PAGA Notice is attached hereto as **Exhibit A**.

2. On or around February 23, 2021, Gearhart filed a Complaint for Damages against Defendants in the Superior Court of the State of California, County of Los Angeles, Case No. 21STCV07228, alleging failure to pay wages, failure to provide meal and rest periods, failure to provide accurate wage statements, unfair business practices, and violations under Labor Code sections 558 and 2802 (the "Lawsuit").

3. On or around September 2, 2021, Plaintiffs collectively filed a First Amended Complaint against Defendants in the Lawsuit, adding additional claims, including but not limited to wrongful termination, violation of Labor Code sections 1102.5 and 98.6, emotional distress, and penalties under PAGA on behalf of current and former aggrieved employees ("FAC").

4. Cabling Solutions is a Tennessee limited liability company that is in the business of contracting with California hotels to upgrade and install cabling in California hotels. Plaintiffs claims against the Hotel Defendants is under a joint employer theory.

5. This Settlement relates to Plaintiffs' individual claims, including but not limited as alleged in the FAC, and the PAGA representative cause of action raised by Plaintiffs on behalf of aggrieved employees. "Aggrieved Employees" include all current and former employees of Cabling Solutions who worked at any location in California, including but not limited to any location of the Hotel Defendants, during one or more pay periods between February 17, 2020 through the Effective Date of this Agreement (as "Effective Date" is defined below). The Parties acknowledge that this Settlement does not affect, bar or preclude any Aggrieved Employees, other than Plaintiffs, from bringing an individual claim against Cabling Solutions; this settlement covers only PAGA penalties as to the Aggrieved Employees.

II. REPRESENTATIONS AND DEFINITIONS

6. "Plaintiffs' Counsel" shall refer to Thomas M. Diachenko of the Law Offices of Thomas M. Diachenko, APC; Rory K. Pendergast and Christopher Tayler of the Pendergast Law Firm, PC; and Ross Quient of The Law Offices of Ross Quient.

7. Counsel for Cabling Solutions ("Defense Counsel") shall refer to Esra Acikalin Hudson of Manatt, Phelps & Phillips, LLP.

8. "Covered Period" shall mean the period from February 17, 2020 through the Effective Date of this Agreement.

9. "PAGA Representative" or "Plaintiff" shall refer to Named Plaintiff Christopher Gearhart.

10. "Court" refers to the Los Angeles County Superior Court.

11. "Covered Claims" means any and all claim for PAGA penalties for Aggrieved Employees that are or could have been alleged in the PAGA Notice or the Lawsuit, as they relate to the failure to pay wages, failure to provide meal and rest periods, failure to timely pay wages, failure to provide accurate pay stubs, failure to reimburse business expenses, and related derivative claims, which include, but are not limited to, claims asserted under Labor Code sections 201-204, 210, 218.6, 226, 226.7, 226.8, 510, 512, 558, 558.1, 1194, 1194.2, 1197.1 and the related California Wage Orders. "Covered Claims" does not include any Aggrieved Employee's individual claims against Defendants; this settlement covers only PAGA penalties.

12. "Eligible Pay Periods" shall refer to the total number of pay periods each Aggrieved Employee worked during the Covered Period.

13. The Effective Date of the Settlement embodied in this Agreement will be the date of approval by the Court via entry of the Order set forth in Sections 28 and 29 below (hereinafter the "Effective Date").

14. A good faith and bona fide dispute exists between the Parties regarding: (1) the extent and amount of any unpaid wages Plaintiffs allege to be owed and/or are owed related to their respective employment with Cabling Solutions and (2) the extent and amount of any meal and/or rest breaks Plaintiffs missed and/or was not provided during their employment with Cabling Solutions, if any (and claims derivative thereof). The Parties have engaged in factual analysis and discovery regarding the facts underlying their respective and each other's positions in this dispute;

15. Cabling Solutions, on behalf of itself and the Releasees, disputes and continues to dispute any violation of California law and alleges that their practices were always compliant and that in any case there were not violations as to Plaintiffs or the Aggrieved Employees. Cabling Solutions, on behalf of itself and the Releasees, also contends that Plaintiffs' claims against Cabling Solutions are barred in whole or part by the applicable statute of limitations and/or failure to exhaust administrative remedies. As such, the Parties disagree on the issue of scope and extent of liability, if any. Cabling Solutions represents that the number of pay periods during the Covered Period were as follows: there were 15 pay periods in 2021 (3 employees x 5 pay

periods between May – June 2021); there were 6 pay periods in 2020 (starting in February) with between 3-4 employees in each one, for a total of 18-24 pay periods in 2020. Given the extremely small number of applicable pay periods and alleged Aggrieved Employees, and that Parties disagree as to whether Cabling Solutions and or any of the Releasees violated the law and whether Plaintiffs' claims against Cabling Solutions are barred by the statute of limitations, in whole or in part, and that PAGA gives the Court broad discretion to reduce the penalties, the Parties determined that the Settlement is fair and reasonable.

16. Cabling Solutions, on behalf of itself and the Releasees, denies any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit, denies liability for the Covered Claims, and further denies that this action is appropriate for representative treatment for any purpose other than settling this Lawsuit. Cabling Solutions contends, among other things, that it complied at all times with the California Labor Code, the related California Wage Orders and the California Business & Professions Code, all other state and federal wage laws, and further contends that all of its respective employees were and are paid properly. Cabling Solutions, on behalf of itself and the Releasees, has denied and continues to deny each and every material factual allegation and alleged claim asserted against it in the PAGA Notice, or the Lawsuit, including the FAC.

17. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Cabling Solutions or any of the Releasees. Nothing herein shall constitute an admission by Cabling Solutions or the Releasees that the Lawsuit was properly brought as a representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Cabling Solutions or any of the Releasees, or of the truth of any of the factual allegations in the operative FAC in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Cabling Solutions or any of the Releasees in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal; and (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification or administration other than for purposes of administering this Settlement.

18. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

19. The Parties agree that upon full execution of this Settlement, the matter is stayed in its entirety save for any filings and motion work necessary to attain court approval of the Settlement. Should either the Court or the LWDA not grant approval, the stay will be lifted five (5) days thereafter and the Parties will be restored to their positions prior to the Settlement.

III. TERMS OF SETTLEMENT

20. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiffs, on behalf of themselves and the Aggrieved Employees, and Cabling Solutions, agree to settle and compromise the Lawsuit, and the Covered Claims, subject to the terms and conditions set forth in this Settlement.

21. The Amount of Settlement. As consideration for the settlement described herein and the release contained in this Settlement, Cabling Solutions agrees to pay a total settlement sum of ONE-HUNDRED THOUSAND DOLLARS (\$100,000.00) ("Settlement Payment"). The Settlement Payment will include: (a) \$5,950.00 payable to Christopher Gearhart, less applicable California and federal withholdings on the \$5,950.00 payment, for which a Form W-2 shall be issued; (b) \$20,000.00 payable to Christopher Gearhart, for which a Form 1099 shall be issued; (c) \$5,950.00 payable to Christopher Williams, less applicable California and federal withholdings on the \$5,950.00 payment, for which a Form W-2 shall be issued, (d) \$20,000.00 payable to Christopher Williams, for which a Form 1099 shall be issued, (e) \$46,100 payable to the Pendergast Law Firm, PC for which applicable Forms 1099 shall be issued, and (f) \$2,000.00 payable for PAGA penalties as follows: \$1,500.00 payable to the Labor and Workforce Development Agency (allocated for purposes of resolving the PAGA claims), and \$500.00 payable, in total, to alleged aggrieved employees, with equal shares disbursement to be made to each of the alleged aggrieved employees (including Plaintiffs) (allocated for purposes of resolving the PAGA claims). Distribution of the settlement checks for the PAGA approval to the aggrieved employees shall be the responsibility of the Defendants. The \$1,500.00 check shall be made payable to the "California Labor & Workforce Development Agency" and delivered to the "Law Offices of Thomas M. Diachenko, APC" who shall deliver the check to the LWDA. Upon distribution of the checks, counsel for the parties shall file a declaration with the court confirming delivery of the checks.

22. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall be eligible to receive a portion of the Settlement Payment allocated to the PAGA Penalties on a pro-rata basis. The actual amount paid will be calculated through a two-step process. First, the \$500.00 will be divided by the total number of unique pay periods to all Aggrieved Employees during the Covered Period (the "Pay Period Amount") and Second, the Pay Period Amount will be multiplied by the number of unique pay periods per Aggrieved Employee. The resulting number is the "Individual PAGA Payment." The Individual PAGA Payment shall be paid through an IRS Form 1099 to the Aggrieved Employee.

23. Timing of Settlement Payments. Within ten (10) calendar days of the Effective Date of the Agreement, Cabling Solutions shall provide Plaintiffs' Counsel with checks for the payments set forth in Section 21(a) – (e) above. With respect to the amount set forth in Section 21(f), within ten (10) calendar days after the Effective Date of the Agreement, Cabling Solutions shall: (i) send to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employees last known address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to Cabling Solutions. It will be conclusively presumed that an Aggrieved Employee's payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check, and (ii) provide Plaintiffs' counsel with the agreed upon payment that is to be sent the LWDA. Plaintiffs' Counsel shall then remit such payment to the LWDA. Settlement checks shall remain valid and negotiable for

one hundred twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, the uncashed funds shall escheat to the State of California in the name of the Aggrieved Employees who did not cash their checks.

24. Tax Treatment of Settlement Amounts. With regard to the Individual PAGA payments, Form 1099s may be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state and/or local tax obligations. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Cabling Solutions is not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of Plaintiffs' Counsel's fees and costs will be reflected in a Form 1099 to Plaintiffs' Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

IV. RELEASES

25. PAGA Release. Upon the approval by the Court of this Settlement, Plaintiffs, for the Covered Period, fully release with prejudice and forever discharge Defendants and their respective present and former officers, directors, owners, members, employees, shareholders, agents, trustees, representatives, attorneys, insurers, customers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, including any individual or entity that could be jointly liable with Cabling Solutions (the foregoing are collectively referred to hereafter as the "Releasees") from the Covered Claims, and from any other expenses, penalties, interest, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature that were asserted or could have been asserted pursuant to Labor Code § 2699 based on the facts alleged in the Lawsuit.

For the avoidance of doubt, this release does not include any Aggrieved Employee's individual claim, other than Plaintiffs' claims, as set forth in Section 26; this settlement covers only PAGA penalties.

26. Plaintiffs' General Release: It is understood and agreed by and between each of the Parties to this Agreement that, in consideration for the promises and covenants undertaken herein, and after consultation with counsel, Plaintiffs do hereby, for themselves and for their respective heirs, legal representatives, agents, attorneys, successors-in-interest and assigns, irrevocably and unconditionally release and forever discharge Defendants and their respective present and former officers, directors, owners, members, employees, shareholders, agents, trustees, representatives, attorneys, insurers, customers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, including any individual or entity that could be jointly liable with Cabling Solutions (the "Company Releasees"), from any and all causes of action, claims, actions, rights, judgments, obligations, damages, penalties, demands, accountings or liabilities of whatever kind and character, which Plaintiffs may have against the Company Releasees by reason of or arising out of, touching upon, or concerning any of the matters, acts or omissions described or referenced in the Lawsuit and the PAGA Notice, any statutory claims, or any and all other matters of whatever kind, nature or description, whether known or unknown, occurring prior to the date of this Agreement.

Said release specifically includes, but is not limited to, any and all claims for breach of contract or implied contract, breach of the covenant of good faith and fair dealing, inducement of breach, wrongful or unlawful discharge or demotion, constructive termination, retaliation, whistleblowing, violation of public policy, retaliation, intentional or negligent infliction of emotional distress, intentional or negligent misrepresentation, conspiracy, tortious denial of contract, interference with proprietary interests, failure to pay wages, bonuses, benefits, vacation pay, severance pay or other compensation of any sort, independent contractor classification, negligence, negligent retention, negligent supervision, negligent hiring, defamation, slander, unlawful efforts to prevent employment, assault, battery, violation of constitutional rights, discrimination on the basis of race, color, sex, national origin, religion, age, disability, pregnancy, medical condition or marital status, harassment, health or safety violations, failure to prevent, train about or investigate harassment/discrimination/retaliation, interference with leave, failure to accommodate disability or pregnancy, retaliation, and/or violation of any statutes, rules, regulations or ordinances, whether federal, state or local, including, but not limited to, OSHA or Cal-OSHA, the California Constitution, ERISA, the Fair Labor Standards Act, the California Wage Orders, the California Labor Code, the Private Attorney General Act, Title VII of the Civil Rights Act of 1964, the Family Medical Leave Act, the California Family Rights Act, the California Fair Employment and Housing Act, the Worker Adjustment and Retraining Notification Act, the laws of the State of Tennessee, Wyoming or any other state in which Plaintiffs performed work for Cabling Solutions, or any ordinance, statute, rule or regulation related to COVID-19.

Plaintiffs represent and warrant that they have not assigned or subrogated any of said rights, claims and causes of action, including any claims referenced above in this section, or authorized any other person or entity to assert such a claim or claims on his behalf, and agree to indemnify and hold the Company harmless against any assignment of said rights, claims and/or causes of action.

In granting the general release set forth above, Plaintiffs expressly waive all rights under Section 1542 of the California Civil Code and any equivalent statute of any other state, which he has read and fully understand. This section reads as follows:

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

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all claims, Plaintiffs expressly acknowledge that this Agreement is also intended to include in its effect, without limitation, all claims which they do not know or expect to exist in their favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claim or claims. This release does not extend to those rights which as a matter of law cannot be waived.

27. General Release by Defendants Cabling Solutions and the Browns: It is understood and agreed by and between each of the Parties to this Agreement that, in consideration for the promises and covenants undertaken herein, and after consultation with counsel, Defendants Cabling Solutions, Lori Brown, and Matthew Brown do hereby, for

themselves and their respective present and former officers, directors, owners, members, employees, shareholders, agents, trustees, representatives, attorneys, insurers, customers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, from any and all causes of action, claims, actions, rights, judgments, obligations, damages, penalties, demands, accountings or liabilities of whatever kind and character, which Defendants Cabling Solutions, Lori Brown, and Matthew Brown may have against Plaintiffs by reason of or arising out of, touching upon, or concerning any of the matters, acts or omissions described or referenced in the Lawsuit and the PAGA Notice, any statutory claims, or any and all other matters of whatever kind, nature or description, whether known or unknown, occurring prior to the date of this Agreement.

Defendants Cabling Solutions, Lori Brown, and Matthew Brown represent and warrant that they have not assigned or subrogated any of said rights, claims and causes of action, including any claims referenced above in this section, or authorized any other person or entity to assert such a claim or claims on their behalf.

In granting the general release set forth above, Defendants Cabling Solutions, Lori Brown, and Matthew Brown expressly waive all rights under Section 1542 of the California Civil Code and any equivalent statute of any other state, which he has read and fully understand. This section reads as follows:

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

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all claims, Defendants Cabling Solutions, Lori Brown, and Matthew Brown expressly acknowledge that this Agreement is also intended to include in its effect, without limitation, all claims which they do not know or expect to exist in their favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claim or claims. This release does not extend to those rights which as a matter of law cannot be waived.

V. APPROVAL STIPULATION

28. The Parties recognize that in accordance with Labor Code § 2699, Court approval is required in the event of a settlement of a PAGA action on a representative basis. The Parties shall submit a stipulation to the Court identifying the terms of the settlement and requesting that the Court approve the Settlement ("Approval Stipulation"). The Settlement is contingent upon the approval by the Court and shall be void if the Court does not grant the approval requested, or if the LWDA objects to the settlement.

VI. DUTIES OF THE PARTIES RELATED TO APPROVAL

29. Promptly upon execution of this Settlement, the Parties shall jointly apply to the Court via the Approval Stipulation for approval of the proposed settlement. The Parties shall apply to the Court for the entry of an Order approving as to form and content this Agreement,

and dismissing the Lawsuit, including Plaintiffs' individual and PAGA representative claims, with prejudice.

30. Also promptly following execution of this Settlement, the Plaintiffs shall file this agreement with the LWDA via its online filing mechanism at: <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

VII. PARTIES' AUTHORITY

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

VIII. NO PRIOR ASSIGNMENTS

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

IX. WARRANTY FOR PLAINTIFFS

Plaintiffs represent and warrant that the Lawsuit encompass all claims that they could have asserted against Cabling Solutions, the Defendants or any of them, including but not limited to under the Fair Labor Standards Act, the California Labor Code, the PAGA, or any equivalent state laws. Plaintiffs further represents that they have no other pending claims, complaints or charges against Cabling Solutions, the Defendants or any of them, or any affiliated or related companies or divisions, predecessors, successors or assigns, owners, members, officers, directors, shareholders, customers, attorneys, employees and agents with any state or federal court or any local, state or federal agency based on any event(s) occurring prior to the date of execution of this Agreement.

Plaintiffs specifically represents that they will not in the future file, will not act as a named Plaintiff or party (including, but not limited to, in a representative capacity or as an "aggrieved employee" under the PAGA), and will not encourage or instigate the filing of any lawsuit or proceeding by any party in any state or federal court, or of any proceeding before any local, state or federal agency, or of any proceeding before any arbitration forum, based upon events occurring prior to the date of execution of this Agreement, claiming that Cabling Solutions, the Defendants, or the Company Releasees violated any law. Nothing in this provision shall be deemed to limit Plaintiffs' communication with their counsel, or to testify pursuant to a subpoena or provide information at the request of any governmental authority.

X. NO ADMISSION

33. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Cabling Solutions, the Defendants or any of the Company Releasees. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

XI. CONFIDENTIALITY

34. The Parties agree that the terms embodied herein are to be treated confidentially to the extent they can be in light of the requirement that the PAGA settlement must be approved by the court. The Parties acknowledge and agree that pursuant to California Labor Code section 2699 (l) (2) requires that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part" and that "[t]he proposed settlement shall be submitted to the agency at the same time it is submitted to the court." With that understanding, Plaintiffs agree not to disclose said terms to anyone except to Plaintiffs' spouses, their attorneys, tax consultants, or to the extent disclosure is required by law.

XII. ATTORNEYS' FEES, COSTS AND EXPENSES

35. Except as specifically set forth herein, each party shall bear its/his/her own attorneys' fees, costs and expenses, taxable or otherwise, incurred by him/her/it/them arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Settlement.

XIII. CONSTRUCTION

36. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiffs and Cabling Solutions regarding actual or potential claims asserted by Plaintiffs against Defendants and Company Releasees. Excluding any applicable Confidentiality Agreement, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

XIV. CAPTIONS AND INTERPRETATIONS

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

XV. MODIFICATION

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

XVI. MISCELLANEOUS

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

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

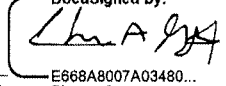
41. This Settlement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

42. The Parties agree that upon final approval by the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction of this action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions, and obligations set forth in this Settlement. The Parties agree that if any provision of this Settlement is determined to be invalid, the invalid portion shall be deemed severed and the remaining Settlement deemed enforceable.

43. Neutral Reference: If any inquiries are made as to Plaintiffs' employment, Cabling Solutions agrees to provide only Plaintiffs' dates of employment and job title.

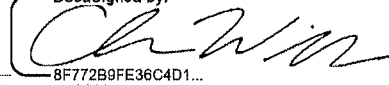
I HAVE READ THE FOREGOING STIPULATION. I ACCEPT AND AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY EXECUTE IT VOLUNTARILY WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

DATED: 12/15/2021 _____

DocuSigned by:

E668A8007A03480...

Christopher Gearhart

DATED: 12/16/2021 _____

DocuSigned by:

8F772B9FE36C4D1...

Christopher Williams

DATED: _____

Lori Brown

DATED: _____

Matthew Brown

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

41. This Settlement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

42. The Parties agree that upon final approval by the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction of this action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions, and obligations set forth in this Settlement. The Parties agree that if any provision of this Settlement is determined to be invalid, the invalid portion shall be deemed severed and the remaining Settlement deemed enforceable.

43. Neutral Reference: If any inquiries are made as to Plaintiffs' employment, Cabling Solutions agrees to provide only Plaintiffs' dates of employment and job title.

I HAVE READ THE FOREGOING STIPULATION. I ACCEPT AND AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY EXECUTE IT VOLUNTARILY WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

DATED: _____

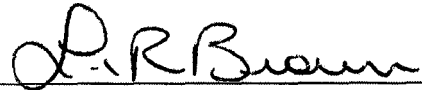
Christopher Gearhart

DATED: _____

Christopher Williams

DATED: _____

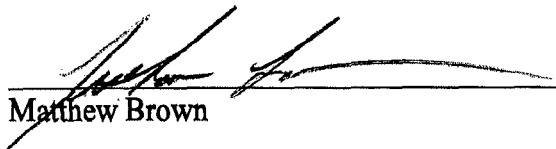
12/15/21



Lori Brown

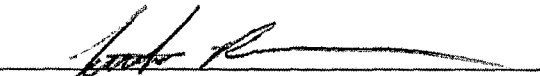
DATED: _____

12/15/21



Matthew Brown

DATED: 12/15/21


CABLING SOLUTIONS, INC.

By: Matt Brown

Its: owner

400866591.2

EXHIBIT A

Rory K. Pendergast
3019 Polk Avenue
San Diego CA 92104

0004050062000080

Embassy Suites by Hilton Arcadia
211 E Huntington Drive
Arcadia CA 91006
USA



USPS CERTIFIED MAIL



9207 1901 4298 0458 6153 15

011000000510535



4050062.1.1

THE PENDERGAST LAW FIRM, PC

3019 Polk Avenue
San Diego, CA 92104
Telephone: 619.344.8699
Facsimile: 619.344.8701

February 17, 2021

Via Electronic Mail

PAGA Administrator
PAGAfilings@dir.ca.gov

Re: *Christopher Gearhart v. Cabling Solutions, LLC dba Cabling Solutions of Rutherford County, LLC; Embassy Suites by Hilton Arcadia; Hilton San Francisco Financial District aka Justice Operating Company, LLC; Embassy Suite Walnut Creek; Hayes Mansion San Jose, Curio Collection by Hilton; Hilton Franchise Holding, LLC*

PAGA NOTICE PURSUANT TO LABOR CODE SECTION 2699, et seq.

Dear PAGA Administrator:

Our office, along with co-counsel Ross Quient of the Law Offices of Ross Quient, and Thomas Diachenko of the Law Offices of Thomas Diachenko, APC, represent Christopher Gearhart, individually and on behalf of all other current or former "aggrieved employees" ("Plaintiffs"), who are current or former employees of Cabling Solutions LLC who worked in California. Mr. Gearhart is a representative "aggrieved employee" because Cabling Solutions committed one or more of the following Labor Code violations against him within the applicable statute of limitation. Cabling Solutions is owned and operated by Lori Brown and Matt Brown who supervised, directed, and/or managed Mr. Gearhart and the other aggrieved employees.

Pursuant to Labor Code Section 2699.3, this letter constitutes written notice of Defendants' various Labor Code violations and of our intent to recover statutory penalties under the Labor Code's Private Attorney General Act of 2004. A copy of this letter is being sent to all Defendants. PAGA payment has been made/is being made via the online portal.

INVOLVED ENTITIES AND INDIVIDUALS

Cabling Solutions is a Tennessee limited liability company, registered to do business in the State of California as Cabling Solutions of Rutherford County, LLC, whose registered agent for service of process is National Registered Agents, Inc., 818 West Seventh Street, Suite 930, Los Angeles, CA 90017. Lori Brown and Matt Brown are individuals who, on behalf of Cabling Solutions, engaged in certain acts which are the subject of this letter. The business address at which the Browns work is 217 Steelson Way, Murfreesboro, TN, 37128. The Browns supervised, managed, and/or directed Plaintiffs during their respective employment periods and within the applicable PAGA period.

Cabling Solutions, a Tennessee company, is in the business of contracting with California hotels to upgrade and install cabling in California hotels. In furtherance of its business, Cabling Solutions hires workers to perform the upgrades and installation. Because Cabling Solutions is based in Tennessee, it relies on its contracted California hotels to supervise its workers (who typically reside on-site while work is on-going) on a day-to-day basis.

The hotels where Plaintiffs worked are "joint employers" based on the level of control they each exercised over Plaintiffs. Each of the known and unknown hotel entity employers are also liable to plaintiff and all aggrieved employees under Labor Code 558.1. Consequently, Plaintiffs intend to pursue remedies against the following California hotels that employed representative Plaintiff Gearhart:

PAGA Administrator
February 17, 2021
Page 2

Embassy Suites by Hilton Arcadia 211 E Huntington Drive Arcadia, CA 91006	Hilton San Francisco Financial District aka Justice Operating Company, LLC 750 Kearny Street San Francisco, CA 94108
Embassy Suite Walnut Creek 1345 Treat Blvd Walnut Creek, CA 94597	Hayes Mansion San Jose, Curio Collection by Hilton 200 Edenvale Ave San Jose, CA 95136
Hilton Franchise Holding, LLC 7930 Jones Branch Drive McLean, VA 22102	

This letter will be amended to include the identifying information of California hotels if additional hotels at which aggrieved employees worked are discovered.

SPECIFIC ALLEGATIONS

Chris Gearhart and the other aggrieved were – and some still *are* - employed by Defendants to upgrade and install cabling at California hotels. Upon information and belief, Plaintiffs contend Cabling Solutions contracts with the hotels and agrees to supply the labor to perform the upgrade. Because the work involves construction with attendant noise and mess, the respective hotels closely monitor and control Plaintiffs' work. Mr. Gearhart, as the representative aggrieved employee, worked more than eight (8) hours in a day and forty (40) hours in a week and was not properly paid overtime wages for his work. Again, the hotels had every incentive to expedite construction (requiring long days and weeks of work) to complete the cable upgrade projects. Indeed, during one stretch, Mr. Gearhart worked 60 consecutive days and was not properly paid overtime compensation.

Further, Plaintiffs typically (though not always) reside at the hotels where they perform their work. As a result, the managers at the hotel would routinely contact Mr. Gearhart and the other aggrieved employees to perform after-hours work. This was a common practice and neither Mr. Gearhart nor the other aggrieved employees were compensated for this time.

Moreover, Mr. Gearhart and his colleagues, for the most part, moved to California to work here. For his part, Mr. Gearhart was unfamiliar with California law regarding rest and meal breaks. None of Mr. Gearhart's employers – Cabling Solutions and the various hotels at which he worked – ever explained to him his rights to breaks. Plaintiffs routinely worked without state mandated breaks being made available to them.

Plaintiffs allege six primary violations of California's Labor Code.

First, Plaintiffs were not properly compensated for overtime. As noted, this failure falls into several categories – failure to pay overtime for hours exceeding eight in a day; failure to pay overtime for hours exceeding forty in a week; failure to pay overtime for consecutive days of work.

Second, Plaintiffs were not properly compensated for their on-call time.

Third, Defendants fail to provide Plaintiffs required meal periods during as required by the Labor Code. And Defendants did not (and do not) provide to Plaintiffs an hour of compensation at their

PAGA Administrator
February 17, 2021
Page 3

regular rate of pay for their missed meal periods. Moreover, whatever meal periods Plaintiffs may have taken were not "uninterrupted." Based on the nature of Plaintiffs' work, they were (and are) required to stay on-site and are often required to interrupt their meal periods to perform tasks for Defendants.

Fourth, Plaintiffs are not provided rest breaks as required by California law, and based on their schedule.

Fifth, Defendants failed to provide Plaintiffs with 24-hours per year of paid time off.

Sixth, for employees no longer working for Defendants, Defendants failed to pay these employees all wages earned and payable at or around their date of separation.

Based on these facts, Defendants are liable as set forth below.

STATUTORY VIOLATIONS

A. Failure to Pay Overtime Wages Pursuant to California Labor Code Sections 510 and 1198

Pursuant to Labor Code Sections 200, 500, 510 and 1198, Defendants were required to compensate Plaintiffs, and other aggrieved employees, for all overtime, which is calculated at two (2.0) times the regular rate of pay for hours worked in excess of twelve (12) hours in one workday.

Based on Plaintiffs' required duties, they were employees entitled to the protections of the Labor Code Sections identified above. For the relevant claim periods for Plaintiffs, Defendants failed to correctly compensate Plaintiffs for overtime hours worked as required by the aforementioned labor regulations and statutes.

Lori and Matt Brown were Cabling Solutions' owners, officers, agents, and failed to provide Plaintiffs with the overtime compensation due to them. The Defendant Hotels failed to provide Plaintiffs with the overtime compensation due to them.

As a direct result, Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, expenses, and attorneys' fees in seeking to compel Defendants to fully perform their obligations under California Law, all to the Plaintiffs' detriment.

Pursuant to Labor Code Sections 200–204, 218.6, 226, 510, and 1194, and Civil Code Section 3289, Plaintiffs, and other aggrieved employees, are entitled to recover the unpaid balance of hourly pay owed (if any), overtime compensation, interest, penalties, attorneys' fees, expenses, and costs of suit.

B. Failure to Provide Meal Premiums Pursuant to California Labor Code Sections 226.7 and 512

Pursuant to California Labor Code Sections 226.7 and 512, and Industrial Welfare Commission Order 4-2001, Section 11, duty-free meal periods of no less than thirty (30) minutes are required for all non-exempt employees who work at least five (5) hours in a work period per day, except that if the employee's total work period per day is no more than (6) hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked

PAGA Administrator
February 17, 2021
Page 4

is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the first meal period was not waived. Meal breaks must be recorded unless the meal period is taken when business operations have ceased. The meal periods are unpaid unless the employee is not fully relieved of all duties. However, an employer who fails to provide duty-free meal periods must pay the employee an additional one (1) hour regular pay for each day in which a duty-free meal period is not provided.

Plaintiffs were non-exempt employees. Defendants failed to provide Plaintiffs with duty-free meal periods. Thus, Defendants failed to provide meal to Plaintiffs in direct violation of California's Labor Code.

Further, not only did Defendants not provide Plaintiff with the required meal periods, Defendants did not pay Plaintiffs meal period premiums (an hour of pay at their regular rate of pay).

Lori and Matt Brown were owners officers, agents, and employees of Defendants, and failed to provide Plaintiffs with meal periods and further failed to pay Plaintiffs the required meal period premiums. Defendant Hotels failed to provide Plaintiffs with meal periods and further failed to pay Plaintiffs the required meal period premiums

At all times mentioned herein, Defendants violated Labor Code Sections 226.7 and 512 by failing to provide Plaintiffs with duty-free meal and/or rest periods in accordance with California Law. Accordingly, Plaintiffs seeks damages available pursuant to Labor Code Sections 226.7 and 512, plus interest pursuant to Labor Code Section 1194 and Civil Code Section 3289.

C. Failure to Provide Rest Period Premiums Pursuant to California Labor Code Sections 226.7 and 512

Pursuant to California Labor Code Section 226.7 and Industrial Welfare Commission Order 4-2001, Section 12, employers must also provide non-exempt employees a ten (10) minute duty-free rest period every four (4) consecutive hours worked. Rest periods need not be recorded. Duty-free rest periods must be paid. An employer who fails to provide duty-free rest periods must pay the employee an additional one (1) hour regular pay for each day in which a duty-free rest period is not provided.

Plaintiffs were non-exempt employees. Defendants failed to provide Plaintiffs with duty-free rest periods after four (4) consecutive hours worked. Thus, Defendants failed to provide rest periods to Plaintiffs in direct violation of California Labor Code Sections herein.

Further, not only did Defendants not provide Plaintiffs with the required rest periods, Defendants also did not pay Plaintiffs rest period premiums.

Lori and Matt Brown were owners, officers, agents, and employee of Defendants, and failed to provide Plaintiffs with rest periods and further failed to pay Plaintiffs the required rest period premiums, as did Defendant Hotels.

At all times mentioned herein, Defendants violated Labor Code Sections 226.7 and 512 by failing to provide Plaintiffs with duty-free rest periods in accordance with California law. Accordingly, Plaintiffs seeks damages available pursuant to Labor Code Sections 226.7 and 512, plus interest pursuant to Labor Code Section 1194 and Civil Code Section 3289.

D. Failure to Provide Accurate Pay Stub Information Pursuant to California Labor Code Section 226 (a)

Labor Code Section 226(a) states, in part: “[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 . . .”

Labor Code Section 226(e)(1) states: “[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”

Further, Labor Code Section 226.3 states, in part: “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

Defendant Cabling Solutions, through its agent, Lori and Matt Brown and/or the named hotel defendants, failed to provide Plaintiffs with pay stubs which included an accurate itemized statement indicating gross wages earned, applicable hourly rates, paid time off accrued, and the number of hours worked at each hourly rate. The pay stubs that were provided to Plaintiffs did not include the accurate amount of overtime wages earned and paid time off accrued by Plaintiffs, and other aggrieved employees, or the number of hours Plaintiffs, and other aggrieved employees, worked at overtime hourly rates. Consequently, Defendants’ failure to provide accurate pay stubs violated Labor Code Section 226(a).

Defendants knowingly and intentionally failed to comply with Labor Code Section 226(a). Accordingly, Defendants are liable for damages owed to Plaintiffs as specified in Labor Code Section 226(e)(1) and are additionally responsible for the payment of civil penalties as provided for in Labor Code Section 226.3.

E. Failure to Make Timely Payments Pursuant to California Labor Code Sections 204 and 210

Pursuant to Labor Code Section 204(a): “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall

PAGA Administrator
February 17, 2021
Page 6

be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Defendants routinely failed to pay Plaintiffs their earned overtime on paydays and as required by California Law, as stated above. Accordingly, Defendants must pay penalties under Labor Code Section 210 as follows: for any initial violation, one hundred (\$100) for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

F. Failure to Pay Employees Wages Owed Following Termination or Resignation of Employment Pursuant to Labor Code Sections 201-203

Certain of the “aggrieved employees” were either involuntarily or voluntarily discharged from employment with Defendants (including Gearhart). Accordingly, pursuant to Labor Code Sections 201-203, they are entitled to wages earned and unpaid at the time of discharge. However, these discharged “aggrieved employees” were not given their wages earned and unpaid at the time of their discharge or within the time allotted by Labor Code Sections 201 and 202.

Matt and Lori Brown were owners, officers, agents, and employees of Defendants, and failed to pay these discharged “aggrieved employees” all wages and sums owed to them within the time allotted by Labor Code Sections 201 and 202 or at all, as did Defendant Hotels. Defendants committed the acts stated herein knowingly and willfully, and these discharged “aggrieved employees” are therefore entitled to waiting time penalties as provided by Labor Code Sections 201, 202, and 203.

G. Violation of California Labor Code Section 2802

California Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures and losses incurred by the employee in direct consequence of the discharge of his or her duties.” An employer that knows or has reason to know that an employee has incurred work-related expenses must reimburse the employee, even if the employee does not request reimbursement. (*Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F. Supp. 2d 901, 903.)

Defendants failed to reimburse Mr. Gearhart and other Aggrieved Employees for necessary expenditures and losses incurred in direct consequence of the discharge of their duties. Specifically, Defendants failed to reimburse Mr. Gearhart and other aggrieved employees for mileage at the proper rate, personal cell phones used for business purposes, tools, and other out of pocket expenses necessary to complete their job duties.

Lori and Matt Brown were owners, officers, agents, and employee of Defendants, and failed to provide Plaintiffs and failed to indemnify Plaintiffs for the necessary expenditures they incurred in direct consequence of their duties, as did Defendant Hotels.

H. Violations under California Labor Code Sections 558 and 558.1

Labor Code Section 558 states: “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an

PAGA Administrator
February 17, 2021
Page 7

amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee." The Section goes on to state that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

Labor Code Section 558.1(a) states: "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation."

Lori and Matt Brown were agents of Defendant Cabling Solutions during all times relevant herein. The named hotel entity employers, and Lori and Matt Brown violated, or caused to be violated, Labor Code Sections and Wage Orders including, but not limited to, those requiring: payment of overtime, payment of wages due at the time of separation, maintenance of accurate time records, and payment of meal period premiums.

The named hotel entity employers, and Lori and Matt Brown are therefore individually and personally liable for the various labor code violations alleged. Accordingly, Plaintiffs are entitled to recovery of such penalties as set forth in Labor Code Sections 558 and 558.1 against each Defendant, and all of them.

REQUEST TO THE LWDA

Plaintiff, acting in his individual capacity and on behalf of other aggrieved employees, respectfully requests that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Christopher Gearhart fully intend to bring a Superior Court action on his own behalf and in his representative capacity on behalf of other current or former aggrieved employees, for penalties pursuant to California Labor Code Sections 2699, et seq. for Defendants' violations of the various enumerated Labor Code Sections set forth throughout this notice letter, including, but not limited to Labor Code Sections 201-204, 210, 218.6, 226, 226.7, 226.8, 510, 512, 558, 558.1, 1194, 1194.2, and 1197.1.

If you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,



Rory K. Pendergast

Enclosure: Proof of Filing (to PAGA defendants)

cc: (on next page)

PAGA Administrator
February 17, 2021
Page 8

Sent Via Regular & Certified Mail to:

Cabling Solutions, LLC
217 Steelson Way
Murfreesboro, TN 37128

Lori and Matt Brown
217 Steelson Way
Murfreesboro, TN 37128

Cabling Solutions, LLC
California Agent for Service: National Registered Agents, Inc.
818 Seventh Street, STE 930
Los Angeles, CA 90017

Frank Melton
Jackson Lewis P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, CA 90017

Embassy Suites by Hilton Arcadia
211 E Huntington Drive
Arcadia, CA 91006

Hilton San Francisco Financial District aka Justice Operating Company, LLC
750 Kearny Street
San Francisco, CA 94108

Embassy Suite Walnut Creek
1345 Treat Blvd
Walnut Creek, CA 94597

Hayes Mansion San Jose, Curio Collection by Hilton
200 Edenvale Ave
San Jose, CA 95136

Hilton Franchise Holding, LLC
7930 Jones Branch Drive
McLean, VA 22102

EXHIBIT 2

2/17/2021

The Pendergast Law Firm, PC Mail - Thank you for submission of your PAGA Case.



Rory Pendergast <rory@rorylaw.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Wed, Feb 17, 2021 at 3:27 PM

To: "rory@rorylaw.com" <rory@rorylaw.com>

2/17/2021

LWDA Case No. LWDA-CM-822036-21

Law Firm : The Pendergast Law Firm, PC

Plaintiff Name : Chris Gearhart

Employer: Cabling Solutions, LLC dba Cabling Solutions of Rutherford County, LLC

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to this action. My business address is Manatt, Phelps & Phillips, LLP, 2049 Century Park East, Suite 1700, Los Angeles, CA 90067.

**JOINT STIPULATION RE PAGA SETTLEMENT WITH
SUPPORTING EXHIBITS AND [PROPOSED] ORDER
APPROVING PAGA SETTLEMENT**

PLEASE SEE ATTACHED SERVICE LIST

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

/s/ Beverly A. Stanfield
Beverly A. Stanfield

SERVICE LIST

***Attorneys for Plaintiffs
Christopher Gearhart and Christopher Williams***

Thomas M. Diachenko, Esq.
thom@diachenkolaw.com
Law Offices of Thomas M. Diachenko, APC
1916 Third Avenue
San Diego, CA 92101
Telephone: (619) 699-5870
Facsimile: (619) 699-5871

Rory K. Pendergast, Esq.
rory@rorylaw.com
Christopher C. Taylor, Esq.
chris@rorylaw.com
The Pendergast Law Firm, PC
3019 Polk Avenue
San Diego, CA 92104
Telephone: (619) 344-8699
Facsimile: (619) 344-8701

Ross I. Quient, Esq.
rquientesq@gmail.com
The Law Offices of Ross Quient
19528 Ventura Blvd., Suite 791
Tarzana, CA 91356
Telephone: (949) 338-8869

400979505.1

1 **PROOF OF SERVICE**

2 I, Beverly A. Stanfield, declare as follows:

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to this action. My business address is Manatt, Phelps & Phillips,
LLP, 2049 Century Park East, Suite 1700, Los Angeles, CA 90067.

5 On March 11, 2022, I served the foregoing document(s) described as:

6 **[PROPOSED] ORDER APPROVING PAGA SETTLEMENT**

7 on the interested parties in this action addressed as follows:

8 **PLEASE SEE ATTACHED SERVICE LIST**

9 ☒ **(BY ELECTRONIC MAIL)** By transmitting such document(s) electronically
10 from my e-mail address bstanfield@manatt.com at Manatt, Phelps & Phillips,
LLP, Los Angeles, California, to the person(s) at the electronic mail addresses
11 listed on the attached service list. The transmission was reported as complete and
without error.

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

14 Executed on March 11, 2022, at Santa Monica, California.

15 /s/ Beverly A. Stanfield
16 Beverly A. Stanfield

SERVICE LIST

***Attorneys for Plaintiffs
Christopher Gearhart and Christopher Williams***

Thomas M. Diachenko, Esq.
thom@diachenkolaw.com
Law Offices of Thomas M. Diachenko, APC
1916 Third Avenue
San Diego, CA 92101
Telephone: (619) 699-5870
Facsimile: (619) 699-5871

Rory K. Pendergast, Esq.
rory@rorylaw.com
Christopher C. Taylor, Esq.
chris@rorylaw.com
The Pendergast Law Firm, PC
3019 Polk Avenue
San Diego, CA 92104
Telephone: (619) 344-8699
Facsimile: (619) 344-8701

Ross I. Quient, Esq.
rquientesq@gmail.com
The Law Offices of Ross Quient
19528 Ventura Blvd., Suite 791
Tarzana, CA 91356
Telephone: (949) 338-8869

401057502.1