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11 Attorneys for Plaintiffs Javier Diaz and George Mendez, individually,
12 and on behalf of all others similarly situated.

13 *[Additional counsel listed on following page]*

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

16 JAVIER DIAZ and GEORGE MENDEZ,
17 individually and on behalf of all others similarly
18 situated,

19 Plaintiffs,

20 vs.

21 BGIS GLOBAL INTEGRATED SOLUTIONS
22 US, LLC; and DOES 1 through 20, inclusive,

23 Defendants.

Case No. 21CV383425

Assigned for all purposes to:
Hon. Sunil R. Kulkarni, Dept. 1

JOINT STIPULATION OF SETTLEMENT

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5 Telephone: 213-237-2400
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6
7 Attorneys for Defendant
BGIS GLOBAL INTEGRATED SOLUTIONS US
8 LLC (erroneously sued as BGIS GLOBAL
INTEGRATED SOLUTIONS US, LLC)
9

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1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“**Agreement**” or “**Settlement**”).

6 This Agreement is made by and between Named Plaintiffs Javier Diaz and George Mendez
7 (“**Named Plaintiffs**”) and the Class Members, on the one hand, and Defendant BGIS Global
8 Integrated Solutions US LLC (“**BGIS**” or “**Defendant**”), on the other hand. Named Plaintiffs and
9 Defendant collectively are referred to in this Agreement as “**the Parties.**”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay the settlement amount of One Million Two Hundred
12 Seventy-Five Thousand Dollars (\$1,275,000.00) as provided in Section 3.07(a) below (“**Gross**
13 **Settlement Amount**”) pursuant to the terms and conditions of this Agreement and for the
14 consideration set forth herein, including but not limited to, a release of all claims by Named Plaintiffs
15 and the Class Members as set forth herein.

16 **ARTICLE I**

17 **DEFINITIONS**

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. “**Action**” means the actions described as follows: *Javier Diaz v. BGIS Global*
21 *Integrated Solutions US, LLC* Case No. 21-cv-02804-VKD, commenced on February 16, 2021, in
22 the Superior Court of the State of California for the County of Santa Clara and currently pending in
23 the United States District Court Northern District of California (herein separately defined as the
24 “**Federal Action**”); and *Javier Diaz and George Mendez v. BGIS Global Integrated Solutions US,*
25 *LLC*, Case No. 21CV383425, commenced on June 22, 2021, in the Superior Court of the State of
26 California for the County of Santa Clara (herein separately defined as the “**State Action**”).

27 b. “**Agreement**” means this Joint Stipulation of Settlement, including the attached
28 Exhibit(s).

c. **“AWS Subclass”** means all current and former non-exempt employees who are or were employed by Defendant in California at any time during the Class Period and worked a 4 days, 10-hours or a 3 days, 12-hours alternative workweek schedule, except for those non-exempt employees who worked a 3 days, 12-hours alternative workweek schedule and who were paid daily overtime for all hours over eight (8) in a day.

d. **“Class”** means all current and former non-exempt employees who are or were employed by Defendant in California at any time during the Class Period.

e. **“Class Counsel”** means the attorneys for the Class and the Class Members, who are:

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Samuel A. Wong
Kashif Haque
Jessica L. Campbell
Fawn F. Bekam
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
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f. **“Class List”** means a list based on Defendant’s business records that identifies each Class Member’s name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, their membership in the AWS Subclass, their membership as a PAGA Group Member, and the number of Qualifying Workweeks worked during the Class Period.

g. **“Class Member(s)”** means all members of the Class.

h. **“Class Period”** means August 17, 2016 through November 12, 2021, or the date the Court grants preliminary approval, whichever is sooner.

i. **“Court”** means the California Superior Court for the County of Santa Clara, where the State Action is currently pending.

j. **“Date of Finality”** means the earliest date, following entry by the Court of an order and judgment finally approving the Settlement, upon which one of the following have occurred: (i) if no objection is filed to the settlement and no objector appears at the hearing on final approval, the date of entry of an order in the State Action granting final approval, (ii) if an objection is filed to the

1 settlement, or an objector appears at the hearing on final approval, then the later of the following: (a)
2 the expiration of all potential appeals periods without a filing of a notice of appeal of the final
3 approval order or judgment; (b) final affirmance of the final approval order and judgment by an
4 appellate court as a result of any appeal(s); or (c) final dismissal or denial of all such appeals
5 (including any petition for review, rehearing, certiorari, etc.) such that the final approval order and
6 judgment is no longer subject to further judicial review.

7 k. **“Defendant”** means BGIS Global Integrated Solutions US LLC.

8 l. **“Defense Counsel”** means counsel for Defendant:

9 David L. Cheng
10 Paul M. Suh
11 FORD & HARRISON LLP
12 350 South Grand Avenue, Suite 2300
13 Los Angeles, CA 90071
14 Telephone: 213-237-2400
15 Facsimile: 213-237-2401

16 m. **“Disposition”** means the method by which the Court approves the terms of the
17 Settlement and retains jurisdiction over its enforcement, implementation, construction,
18 administration, and interpretation.

19 n. **“Final Order Approving Settlement of Class Action”** or **“Final Order”** means the
20 final formal court order signed by the Court following the hearing on Named Plaintiffs’ Motion for
21 Final Approval, in accordance with the terms herein, approving this Agreement.

22 o. **“Gross Settlement Amount”** means One Million Two Hundred Seventy-Five
23 Thousand Dollars and Zero Cents (\$1,275,000.00) to be paid by Defendant as provided by this
24 Agreement to settle this Action. All payments to the Class, the LWDA Payment, administration
25 costs, attorney’s fees and costs, and Incentive Awards, pursuant to Section 3.07(a) below, shall be
26 paid out of the Gross Settlement Amount. The employer’s share of payroll taxes arising from the
27 payments made under this settlement shall be paid by Defendant separate from and in addition to the
28 Gross Settlement Amount. The Gross Settlement Amount is subject to a pro rata increase pursuant
to Section 3.04(e) below. No part of the Gross Settlement Amount shall revert to Defendant.

1 p. **“Incentive Awards”** means a monetary amount of up to Ten Thousand Dollars
2 (\$10,000.00) for each of the Named Plaintiffs, subject to Court approval, in recognition of their effort
3 and work in prosecuting the Action on behalf of Class Members, and for their general release of
4 claims.

5 q. **“Individual Settlement Payment(s)”** means each Participating Class Member’s
6 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
7 by the calculations provided in this Agreement.

8 r. **“LWDA”** means The State of California Labor and Workforce Development Agency.

9 s. **“LWDA Payment”** means 75% of the \$50,000 allocated to the settlement of PAGA
10 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.07(e) of
11 this Agreement, as provided for below.

12 t. **“Motion for Final Approval”** means Named Plaintiffs’ submission of a written
13 motion, including any evidence as may be required for the Court to conduct an inquiry into the
14 fairness of the Settlement as set forth in this Agreement, to conduct a final fairness and approval
15 hearing, and to enter a Final Order in this Action. The Motion for Final Approval shall be filed in
16 *Diaz, et al. v. BGIS Global Integrated Solutions US, LLC*, Case No. 21CV383425 (Santa Clara Cty.
17 Super. Ct.)

18 u. **“Motion for Preliminary Approval”** means Named Plaintiffs’ submission of a
19 written motion, including any evidence as may be required for the Court to grant preliminary
20 approval of the Settlement as required by Rule 3.769 of the California Rules of Court. The Motion
21 for Preliminary Approval shall be filed in in *Diaz, et al. v. BGIS Global Integrated Solutions US,*
22 *LLC*, Case No. 21CV383425 (Santa Clara Cty. Super. Ct.)

23 v. **“Named Plaintiffs”** means Javier Diaz and George Mendez.

24 w. **“Net Settlement Amount”** means the Gross Settlement Amount less Court-approved
25 administration costs, Class Counsels’ attorney’s fees and costs, Incentive Awards, and the LWDA
26 Payment, pursuant to Section 3.06(a)-(f) below.

1 x. **“Non-Participating Class Member(s)”** means any Class Member(s) who submit to
2 the Settlement Administrator a valid and timely written request to be excluded from the Class
3 pursuant to Section 3.05(b) below.

4 y. **“Notice Packet”** means the Notice of Proposed Class Action Settlement in a form
5 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

6 z. **“PAGA”** means the California Private Attorneys General Act of 2004, which is
7 codified in California Labor Code §§ 2698 *et seq.*

8 aa. **“PAGA Settlement Amount”** means the portion of the Gross Settlement Amount
9 allocated to the resolution of PAGA Group Members’ claims arising under PAGA. The Parties have
10 agreed that the PAGA Settlement Amount is Fifty Thousand Dollars (\$50,000), subject to Court
11 approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the
12 remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
13 Members.

14 bb. **“PAGA Group Members”** means all Class Members employed by Defendant at any
15 time between August 17, 2016 through November 12, 2021 or the date the Court grants preliminary
16 approval, whichever is sooner (**“PAGA Period”**), subject to Court approval.

17 cc. **“Participating Class Member(s)”** is defined as a Class Member who does not timely
18 exclude himself or herself from the Settlement. Each Participating Class Member will be paid his/her
19 Individual Settlement Payment.

20 dd. **“Preliminary Approval Date”** means the date the Court preliminarily approves the
21 Settlement embodied in this Agreement.

22 ee. **“Qualified Settlement Fund”** or **“QSF”** means a fund within the meaning of
23 Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
24 Administrator for the benefit of Participating Class Members.

25 ff. **“Qualifying Workweeks”** means the number of weeks that Class Members worked
26 for Defendant as non-exempt employees during the Class Period.

gg. **“Released Parties”** means Defendants and their predecessors, successors, parents, subsidiaries, affiliates and/or related entities and each of their respective directors, members, officers, committee members, supervisors, employees, representatives and agents.

hh. **“Response Deadline”** means the deadline by which Class Members must postmark or fax to the Settlement Administrator requests for exclusion or written notices of objection. The Response Deadline will be forty-five (45) calendar days after the initial mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-mailing.

ii. **“Settlement Administration Costs”** means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, mailing of notice to the class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed checks, and generation of checks to Class Counsel for attorneys’ fees and costs, to Named Plaintiffs for their Incentive Awards, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

jj. **“Settlement Administrator”** means Phoenix Settlement Administrator, which the Parties have agreed will be responsible for the administration of the Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Agreement.

ARTICLE II

CONTINGENT NATURE OF THE AGREEMENT

Section 2.01: Stipulation of Class Certification for Settlement Purposes

Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality

does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class with respect to all causes of action alleged in the Action. Defendant does not consent to certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the Class as to Defendant will be vacated and Named Plaintiffs, Defendant, and the Class will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, the fact that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. If the Date of Finality does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly reserves the right to challenge the propriety of class certification in the Action for any purpose, if the Date of Finality does not occur.

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. If the Court does not grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a resolution, the Parties agree to seek the assistance of mediator Hon. Carl J. West (Ret.) to resolve the dispute.

ARTICLE III

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT

The procedure for obtaining Court approval of and implementing this Agreement shall be as

1 follows:

2 **Section 3.01: Amendment of State Action and Stay of Federal Action**

3 For settlement purposes only, the Parties agree to the filing of an amended complaint in the
4 State Action, which adds all claims asserted in the Federal Action; and a stay of the Federal Action
5 pending approval of the Settlement by the Court in the State Action. A copy of the amended
6 complaint, which Plaintiffs filed on September 30, 2021, is attached hereto as **Exhibit B**. With
7 respect to the amended complaint, the Parties specifically agree as follows:

- 8 a. A stipulation to stay the Federal Action pending approval of the Settlement by the Court
9 in the State Action shall be filed within seven (7) calendar days of the Parties fully
10 executing this Agreement;
- 11 b. The Parties agree that Defendant is not required to respond to the amended complaint and
12 that there shall be no waiver argument asserted against Defendant for not responding to a
13 pleading that the Parties agreed could be filed only for purposes of effectuating this
14 Settlement.

15 **Section 3.02: Motion for Conditional Class Certification and Preliminary Approval**

16 Named Plaintiffs will bring a motion before the Court for an order conditionally certifying
17 the Class to include all claims pled in the Action based on the preliminary approval of this
18 Agreement. Such submission shall include a declaration and proof to the Court verifying that Class
19 Counsel has provided any and all notices of the settlement to the LWDA, as set forth in California
20 Labor Code section 2699(1)(2). Class Counsel shall provide the Court and Defense Counsel with
21 proof of compliance with California Labor Code section 2699(1)(2) within seven (7) calendar days
22 of Named Plaintiffs filing their Motion for Preliminary Approval. The date that the Court grants
23 preliminary approval of this Agreement will be the “**Preliminary Approval Date.**”

24 **Section 3.03: The Settlement Administrator**

25 The Parties have chosen Phoenix Settlement Administrators to administer this Settlement and
26 to act as the Settlement Administrator, including but not limited to distributing and responding to
27 inquiries about the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net
28 Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement

1 Payment checks and distributing them to Participating Class Members, generating and filing related
2 tax reporting forms, establishing and maintaining the QSF, and issuing the payment to Class Counsel
3 for attorneys' fees and costs, the Incentive Award checks to Named Plaintiffs, and the employer
4 payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree
5 to all of the terms and conditions of this Agreement.

6 All costs of administering the Settlement, including but not limited to all costs and fees
7 associated with preparing, issuing and mailing any and all notices to Class Members and/or
8 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
9 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
10 returns and any other filings required by any governmental taxing authority or agency, all costs and
11 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
12 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
13 incurred and/or charged by the Settlement Administrator in connection with the execution of its
14 duties under this Agreement ("**Settlement Administration Costs**"), shall be paid to the Settlement
15 Administrator from the Gross Settlement Amount.

16 **Section 3.04: Notice to Class Members**

17 No later than five (5) business days after the Preliminary Approval Date, Defendant will
18 provide, subject to a mutually agreeable protective order entered by the Court the Settlement
19 Administrator with a "**Class List**" in electronic format based on its business records, identifying the
20 names of the Class Members, their last known home addresses, Social Security numbers or, as
21 applicable, other taxpayer identification number, their membership in the AWS Subclass, their
22 membership as a PAGA Class Member, and weeks worked during the Class Period.

23 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
24 Administrator will send Class Members, by first-class mail, at their last known address, the Court
25 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
26 Settlement Class. The Notice Packet will include a calculation of the Class Member's approximate
27 share of the Net Settlement Amount. Class Members will have forty-five (45) days from the date of
28 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the

1 Settlement Administrator will check all Class Member addresses against the National Change of
2 Address database and shall update any addresses before mailing. The Settlement Administrator will
3 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
4 Notice Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall
5 have fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of
6 the initial mailing, whichever is later, in which to postmark objections or requests for exclusion.
7 Class Members shall not be required to submit claim forms in order to receive an Individual
8 Settlement Payment.

9 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
10 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
11 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
12 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
13 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
14 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the Parties
15 that reasonable means be used to locate Class Members and that the Settlement Administrator be
16 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
17 Individual Settlement Payments to all Participating Class Members.

18 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
19 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
20 status report provided to the Parties.

21 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
22 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
23 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
24 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
25 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
26 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
27 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
28 procedures set forth in Section 3.07(g) below.

1 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
2 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
3 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
4 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
5 exclusion and objections that the Settlement Administrator received.

6 **Section 3.05: Responses to Notice**

7 **a. Class Member Disputes**

8 If any Class Member disagrees with Defendant's records as to his or her Qualifying
9 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
10 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
11 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
12 supporting documentation. The Notice will also provide a method for the Class Member to challenge
13 the employment data on which his or her Individual Settlement Payment is based. The Settlement
14 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith
15 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the
16 final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on
17 the information provided to it.

18 **b. Requests for Exclusion from Class**

19 In order for any Class Member to validly exclude himself or herself from the Class and this
20 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class
21 Member or his or her authorized representative, and must be sent to the Settlement Administrator,
22 postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement
23 Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall
24 contain instructions on how to validly exclude himself or herself from the Class and this Settlement
25 (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial
26 mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be
27 conclusively determined according to the records of the Settlement Administrator. Any Class
28 Member who timely and validly requests exclusion from the Class and this Settlement will not be

entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this Agreement, and will not have any right to object, appeal, or comment thereon.

Any Class Member who fails to timely submit a request for exclusion shall automatically be deemed a Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order Approving Settlement of Class Action, and by the other rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action and/or released in this Agreement will be extinguished.

If more than fifteen percent (15%) of Class Members validly exclude themselves from the Settlement, Defendant will have the option to void the Settlement.

c. Objections to Settlement

For any Class Member to object to this Agreement, or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), a written statement of the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and the date the signed objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members may also appear at the final approval hearing to object. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

d. Encouragement of Class Members

The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from Class Members.

1 **e. Right of Named Plaintiffs to Adjust Gross Settlement Amount**

2 Defendant has estimated the number of Qualifying Workweeks as 5,013. If the number of
3 Class Members increases by more than 10% (approximately 5,515 Qualifying Workweeks) as of the
4 end of the Class Period, there will be a pro rata adjustment to the Gross Settlement Amount, equal to
5 the Net Settlement Amount multiplied by the percentage in excess of 10%. For example, if the
6 number of workweeks increased by 12%, the pro rata adjustment to the Gross Settlement Amount
7 would equal the Net Settlement Amount multiplied by 2%.

8 **Section 3.06: Final Fairness and Approval Hearing**

9 On the date set forth in the Court's order granting Named Plaintiffs' Motion for Preliminary
10 Approval, and Notice Packet, a final fairness and approval hearing shall be held before the Court in
11 order to (1) review this Agreement and determine whether the Court should give it final approval,
12 and (2) consider any objections made and all responses by the Parties to such objections. At the final
13 fairness and approval hearing, the Parties shall ask the Court to grant final approval to this Agreement
14 and shall submit to the Court a proposed Final Order. Upon granting final approval of the Settlement
15 contained herein, the Parties shall request that final judgment be entered in the State Action and shall
16 request dismissal with prejudice all claims asserted in the Federal Action, and implementing the
17 Releases contained in this Agreement as to Named Plaintiffs and all Participating Class Members.
18 Class Counsel shall also prepare and file all necessary filings needed to dismiss the Federal Action
19 with prejudice, including, without limitation, a stipulation or motion for dismissal of the Federal
20 Action with prejudice. Class Counsel shall further provide, within seven (7) calendar days of the
21 Court entering a final judgment that provides for or denies an award of civil penalties pursuant to the
22 California Labor Code, any and all notices of the final judgment to the LWDA, as set forth in
23 California Labor Code section 2699(1)(3). Further, within seven (7) calendar days of request by
24 Defense Counsel, Class Counsel shall provide Defense Counsel with proof of compliance with
25 California Labor Code section 2699(1)(3).

1 **Section 3.07: Settlement Payment Procedures**

2 **a. Settlement Amount**

3 In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the
4 Gross Settlement Amount in the amount of One Million Two Hundred Seventy-Five Thousand
5 Dollars (\$1,275,000.00), subject to a pro rata increase under the condition set forth in Section 3.05(e).

6 Within thirty (30) calendar days after the Date of Finality, Defendant shall transfer the Gross
7 Settlement Amount plus Defendant's share of employer-side payroll taxes, as set forth herein, into a
8 QSF established by the Settlement Administrator either directly or by sending the funds to the
9 Settlement Administrator to be deposited and distributed. The Settlement Administrator will use these
10 funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class
11 Counsel's attorneys' fees and costs, the Incentive Awards, the LWDA Payment (taken from the
12 amount allocated for the PAGA Settlement Amount), all employer and employee tax deductions and
13 withholdings in respect of the Individual Settlement Payments, and the Settlement Administration
14 Costs.

15 Within ten (10) court days after receiving Defendant's final payment, funding the Gross
16 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments
17 to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment (taken
18 from the amount allocated for the PAGA Settlement Amount), the Incentive Awards, and employer
19 and employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Prior to
20 this distribution, the Settlement Administrator will perform a search based on the National Change
21 of Address Database to update and correct for any known or identifiable address changes.

22 **b. Payment of Attorneys' Fees and Costs**

23 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
24 of the current Gross Settlement Amount, which, based on the current Gross Settlement Amount, shall
25 not exceed Four Hundred Twenty-Five Thousand Dollars and Zero Cents (\$425,000.00). Class
26 Counsel shall submit an application for an award of costs not to exceed Twenty Thousand Dollars
27 (\$20,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final
28 Fairness and Approval Hearing. Defendant shall not object to or oppose any such application in these

1 amounts. Class Counsel shall serve Defendant with copies of all documents submitted in support of
2 their application for an award of attorneys' fees and costs.

3 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
4 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
5 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
6 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
7 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
8 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
9 will be reallocated to the Net Settlement Amount.

10 **c. Payment of Settlement Administration Costs**

11 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
12 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Six
13 Thousand Dollars (\$6,000.00).

14 **d. Payment of Incentive Award to Named Plaintiffs**

15 Subject to Court approval, the Named Plaintiffs shall each receive an Incentive Award of up
16 to Ten Thousand Dollars (\$10,000.00), the request for which Defendant will not object to or oppose.
17 The Incentive Awards shall be paid out of the Gross Settlement Amount and shall not constitute
18 payment to any Participating Class Member(s) other than Named Plaintiffs. To the extent that the
19 Court approves less than the amount of incentive award that Class Counsel request, the difference
20 between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

21 Because it is the intent of the Parties that the Incentive Awards represent payment to Named
22 Plaintiffs for their service to the Class Members, and not wages, the Settlement Administrator will
23 not withhold any taxes from the Incentive Awards. The Incentive Awards will be reported on a Form
24 1099, which the Settlement Administrator will provide to Named Plaintiffs and to the pertinent taxing
25 authorities as required by law.

26 **e. Payment to the Labor and Workforce Development Agency**

27 In consideration of claims made under PAGA, Class Counsel will request that the Court
28 approve allocation of Fifty Thousand Dollars (\$50,000) of the Gross Settlement Amount to these

claims. Seventy-five percent (75%) of this payment will be paid to the LWDA, and twenty-five percent (25%) will be paid to the Net Settlement Amount for distribution to PAGA Group Members. Defendant will not oppose this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount. The Court's adjustment, if any, of the amount allocated to Named Plaintiffs' PAGA claim in the Action, will not invalidate this Agreement.

f. Payment of Individual Settlement Payments to Participating Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member. However, for purposes of calculating the Individual Settlement Payment, the individual Qualifying Workweeks for all Participating Class Members shall be weighted, in which the Settlement Administrator shall apply a 2/3 weighted ratio factor to the AWS Subclass Member's Individual Settlement Payment, and a 1/3 weighted ratio factor for all remaining Participating Class Members who are not members of the AWS Subclass. For example, if the data produced by Defendant demonstrates a Participating Class Member, who is also a AWS Subclass member, worked 10 Qualifying Workweeks during the Class Period, their Individual Settlement Payment shall be calculated as follows:

$$(10 \text{ Qualifying Workweeks} \div \text{Qualifying Workweeks for all Participating Class Members}) \times \text{Net Settlement Amount} \times 2/3$$

As another example, if the data produced by Defendant demonstrates a Class Member (but not an AWS Subclass Member) worked 10 Qualifying Workweeks during the Class Period, their Individual Settlement Payment shall be calculated as follows:

$$(10 \text{ Qualifying Workweeks} \div \text{Qualifying Workweeks for all Participating Class Members}) \times \text{Net Settlement Amount} \times 1/3$$

This weighting of Individual Settlement Payments is solely for purposes of calculating Individual Settlement Payments, and will not trigger the pro rata increase provision in Section 3.05(e), above. It is the intent of the Parties that the Settlement Administrator be given discretion to take steps to resolve any issues in respect of the application of the formula.

1 To calculate the minimum amount each Class Member will receive based on their individual
2 Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying
3 Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis
4 (subject to the weighted ratio factors described above). Qualifying Workweeks will be rounded up
5 to the next whole integer. Each Class Member's approximate Individual Settlement Payment amount
6 will be included in his or her Notice Packet. After final approval by the Court, the Net Settlement
7 Amount will be dispersed to Participating Class Members (those who did not exclude themselves)
8 on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period
9 by each Participating Class Member (subject to the weighted ratio factors described above).

10 Each Individual Settlement Payment will represent wages and penalties allocated using the
11 following formula: 1/3 allocated to wages; 1/3 allocated to interest, and 1/3 allocated to penalties.
12 The amounts paid as wages shall be subject to all tax withholdings customarily made from an
13 employee's wages and all other authorized and required withholdings and shall be reported by W-2
14 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement
15 Amount. The amounts paid as penalties and interest shall be subject to all authorized and required
16 withholdings other than the tax withholdings customarily made from employees' wages and shall be
17 reported by IRS 1099 forms.

18 No later than ten (10) business days after receiving the Gross Settlement Amount from
19 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
20 Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the
21 Net Settlement Amount allocated to wages will be reduced by applicable employer and employee
22 tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of
23 the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the
24 extent required by law for the interest and penalty portions of the Individual Settlement Payments.
25 Participating Class Members shall have 180 days from the date their Individual Settlement Payment
26 checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration
27 of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller
28 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

1 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
2 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
3 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
4 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
5 Settlement Administrator is unable to obtain a valid mailing address through this process, the
6 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
7 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

8 **g. Default on Payment.**

9 Defendant's failure to fund the Gross Settlement Amount within ten (10) calendar days after
10 the date required for funding in accordance with Section 3.07(a) shall be considered a default. In the
11 event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will
12 provide notice to Class Counsel and Defendant's counsel within three (3) business days of the missed
13 payment. Thereafter, Defendant will have seven (7) days to cure the default and tender payment to
14 the Settlement Administrator. In the event Defendant fails to cure the default within the times set
15 forth herein, Named Plaintiffs may elect to enter judgment against Defendant, on an ex parte basis,
16 for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiffs will be entitled
17 to recover interest at ten percent (10%) per year from the due date for such payment and reasonable
18 attorneys' fees and costs.

19 **h. No Credit Toward Benefit Plans.**

20 The Individual Settlement Payments made to Participating Class Members under this
21 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
22 calculate any additional benefits under any benefit plans to which any Class Members may be
23 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
24 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
25 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
26 Members may be entitled under any benefit plans.

1 **ARTICLE IV**

2 **LIMITATIONS ON USE OF THIS SETTLEMENT**

3 **Section 4.01: No Admission**

4 Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a
5 Class should not have been certified in the Action. This Agreement is entered into solely for the
6 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
7 construed as an admission of liability or wrongdoing by Defendant.

8 **Section 4.02: Non-Evidentiary Use**

9 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
10 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
11 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
12 including but not limited to, evidence of a presumption, concession, indication, or admission by any
13 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
14 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
15 proceeding in the Action or any other proceeding alleging the same or similar allegations or facts in
16 the Action, except for the purposes of effectuating the Settlement pursuant to this Agreement or for
17 Defendant to establish that a Class Member has resolved any of his or her claims released through
18 this Agreement.

19 **Section 4.03: Nullification**

20 The Parties have agreed to the certification of the Class encompassing all claims alleged in
21 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
22 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
23 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
24 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
25 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
26 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
27 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
28 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to

1 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
2 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
3 should be certified by the Court in a non-settlement context in this Action or any other action, and in
4 any of those events, Defendant expressly reserves the right to oppose certification of the Class.

5 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
6 Gross Settlement Amount shall not be funded pending the completion of the appeal.

7 **ARTICLE V**

8 **RELEASES**

9 **Section 5.01: Released Claims by Class Members**

10 Upon the date Defendant transfers the Gross Settlement Amount, Named Plaintiffs and
11 Participating Class Members who do not opt out of the Settlement, release the Released Parties from
12 any and all claims alleged or which could have been in alleged based on facts pleaded in Named
13 Plaintiffs' operative complaints in the State Action and Federal Action, during the Class Period,
14 including but not limited to the: (1) failure to pay minimum wages; (2) failure to pay overtime wages;
15 (3) failure to provide meal periods; (4) failure to authorize or permit rest periods; (5) failure to pay
16 wages upon separation of employment and within the required time; (6) failure to furnish accurate
17 itemized wage statements wage statement violations; (7) failure to reimburse necessary business
18 expenses; (8) failure to pay vacation wages in violation of Cal. Lab. Code 227.3; and (9) violation of
19 California Business and Professions Code §§17200, *et seq.*, based on the preceding claims, including
20 claims for violation of California Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 227.3,
21 510, 511, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2800, and 2802 ("Released Claims").

22 **Section 5.02: Released Claims by PAGA Group Members**

23 Upon the date Defendant transfers the Gross Settlement Amount, the State of California and
24 PAGA Group Members release the Released Parties from all claims exhausted in Plaintiff's notice(s)
25 sent to the LWDA and alleged in the operative complaint, which arose during the PAGA Period,
26 regardless of whether PAGA Group Members opt out of the Class Settlement, including claims for
27 violation of California Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 511,
28 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2800, and 2802.

1 **Section 5.03: Named Plaintiffs' Release of Unknown Claims**

2 Upon the date Defendant transfers the Gross Settlement Amount, Named Plaintiffs, waive,
3 release, acquit, and forever discharge the Released Parties from any and all claims, actions, charges,
4 complaints, grievances, and causes of action, of any nature arising from Named Plaintiffs'
5 employment with Defendant, whether known or unknown, which exist or may exist as of the Parties'
6 execution of this Agreement.

7 Section 1542 of the California Civil Code provides as follows:

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

13 Named Plaintiff's general release provided herein is made with an express waiver and
14 relinquishment of any claim, right, or benefit under California Civil Code § 1542.

15 **ARTICLE VI**

16 **MISCELLANEOUS PROVISIONS**

17 **Section 6.01: Amendments or Modification**

18 The terms and provisions of this Agreement may be amended or modified only by an express
19 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

20 **Section 6.02: Assignment**

21 None of the rights, commitments, or obligations recognized under this Agreement may be
22 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
23 consent of each other Party and their respective counsel. The representations, warranties, covenants,
24 and agreements contained in this Agreement are for the sole benefit of the Parties under this
25 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

26 **Section 6.03: Governing Law**

27 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
28 shall be determined, in accordance with the laws of the State of California, without regard to conflicts

1 of laws.

2 **Section 6.04: Entire Agreement**

3 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
4 contains the entire understanding of the Parties with respect to the subject matter contained herein.
5 In case of any conflict between text contained in Articles I through VI of this Agreement and text
6 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
7 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
8 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
9 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
10 supersedes all prior agreements and understandings among the Parties with respect to the settlement
11 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
12 prior agreements or proposals.

13 **Section 6.05: Waiver of Compliance**

14 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
15 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
16 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
17 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
18 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
19 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

20 **Section 6.06: Counterparts and Fax/PDF Signatures**

21 This Agreement, and any amendments hereto, may be executed in any number of counterparts
22 and any Party and/or their respective counsel may execute any such counterpart, each of which when
23 executed and delivered shall be deemed to be an original. All counterparts taken together shall
24 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
25 signature.

26 **Section 6.07: Meet and Confer Regarding Disputes**

27 Should any dispute arise among the Parties or their respective counsel regarding the
28 implementation or interpretation of this Agreement, a representative of Class Counsel and a

representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

Section 6.08: Agreement Binding on Successors

This Agreement will be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

Section 6.09: Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

Section 6.10: Fair and Reasonable Settlement

The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's-length negotiation and in the context of adversarial litigation, taking into account all relevant factors, current and potential. The Parties further believe that the Settlement is and is consistent with public policy, and fully complies with applicable law.

Section 6.11: Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement and shall not be considered in interpreting this Agreement.

Section 6.12: Notice

Except as otherwise expressly provided in the Agreement, all notices, demands, and other communications under this Agreement must be in writing and addressed as follows:

To Named Plaintiffs and the Class:

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
Fawn F. Bekam
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618

1 Telephone: (949) 379-6250
2 Facsimile: (949) 379-6251

3 And

4 *To Defendant:*

5 David L. Cheng
6 Paul M. Suh
7 FORD & HARRISON LLP
8 350 South Grand Avenue, Suite 2300
Los Angeles, CA 90071
Telephone: 213-237-2400
Facsimile: 213-237-2401

9 **Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

10 To the extent consistent with class action procedure, this Agreement shall be enforceable by
11 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
12 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the
13 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
14 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
15 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
16 extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more
17 of the Parties institutes any legal action or other proceeding against any other Party or Parties to
18 enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover
19 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness
20 fees incurred in connection with any enforcement actions.

21 **Section 6.14: Mutual Full Cooperation**

22 The Parties agree fully to cooperate with each other to accomplish the terms of this
23 Agreement, including but not limited to the execution of such documents, and the taking of such
24 other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties
25 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
26 terms. In the event the Parties are unable to reach agreement on the form or content of any document
27 needed to implement the Settlement, or on any supplemental provisions that may become necessary
28 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Section 6.15: Authorization to Act

Class Counsel warrants and represents that they are authorized by Named Plaintiffs, and Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action required to effectuate the terms of this Agreement, except for signing documents, including but not limited to this Agreement, that are required to be signed by the Parties themselves. Defendant represents and warrants that the individual executing this Agreement on its behalf has the full right, power, and authority to enter into this Agreement and to carry out the transactions contemplated herein.

Section 6.16: No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 10/15/2021

JAVIER DIAZ

By:

DocuSigned by:
Javier Diaz
48D494BC85C94E4...

Named Plaintiff

Dated: 10/15/2021

GEORGE MENDEZ

By:

DocuSigned by:
R S D I
401F8CA977D7440...

Named Plaintiff

1
2 Dated: October 28, 2021
3

BGIS GLOBAL INTEGRATED SOLUTIONS
US LLC

4 By: 
(Signature)

5 Andrew McLachlin

(Printed Name)

6 SVP & General Counsel

7 (Title)

8
9
10 **APPROVED AS TO FORM ONLY:**

11
12 Dated: October 15, 2021

AEGIS LAW FIRM, PC

13
14 By: 

15 Samuel A. Wong

16 Kashif Haque

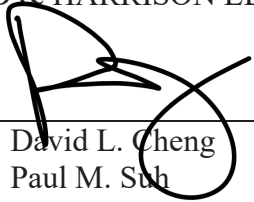
Jessica L. Campbell

17 Fawn F. Bekam

18 Attorneys for Named Plaintiffs Javier Diaz and
George Mendez

19
20 Dated: October 29, 2021

FORD & HARRISON LLP

21
22 By: 
23 David L. Cheng
Paul M. Suh

24 Attorneys for Defendant BGIS GLOBAL
25 INTEGRATED SOLUTIONS US LLC

EXHIBIT A

THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Javier Diaz, et al. v. BGIS Global Integrated Solutions US, LLC, Santa Clara County Superior Court
Case No. 21CV383425

**If you worked for BGIS Global Integrated Solutions US LLC in California
at any time from August 17, 2016, through November 12, 2021,
a settlement of a class action lawsuit may affect your rights.**

This is a court-authorized notice. It is not a solicitation from a lawyer.

- A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Javier Diaz, et al. v. BGIS US Global Integrated Solutions US, LLC*, Case No. 21CV383425 (Santa Clara County Superior Court) (the “Lawsuit”). The purpose of this Notice of Class Action Settlement (“Notice”) is to briefly describe the Lawsuit, and to inform you of your rights and options in connection with the Lawsuit and the proposed settlement.
- The Court has preliminarily approved a class action settlement with Defendant BGIS Global Integrated Solutions US LLC (“BGIS”), which will affect all non-exempt employees who worked for BGIS in California at any time between August 17, 2016, through November 12, 2021 (the “Class”).
- If the Court grants final approval of the Settlement, there may be money available to you.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
PARTICIPATE IN THE SETTLEMENT – <u>NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Cannot pursue your own lawsuit. By doing nothing, you become part of the Class and will collect a settlement award as detailed below. But you will not be able to bring your own lawsuit against BGIS for wage and hour violations that relate to the claims brought in this Lawsuit.
OBJECT TO THE SETTLEMENT	Stay in this Lawsuit. Receive a payment. Object. Cannot pursue your own lawsuit. To object to the Settlement, you must write to the Settlement Administrator about why you do not like the settlement. You will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the settlement in the same way as Class Members who do not object.
ASK TO BE EXCLUDED	Get out of this Lawsuit. Receive a smaller or no payment from it. Keep your right to pursue your own lawsuit for damages. If you ask to be excluded from the Settlement, you keep your right to sue BGIS separately about the legal claims in this Lawsuit, except as to the claim under the California Private Attorneys General Act (“PAGA”). If you choose this option, you must exclude yourself, in writing, from the Settlement. As a result, you may receive only a very small payment for resolution of the PAGA claim .

- **Regardless of the option you choose, you will not be retaliated against for exercising your rights.** To object to the Settlement or to ask to be excluded, you must act before [DATE].
- **Any questions?** Read on or contact the Settlement Administrator listed below at 1-XXX-XXX-XXXX.

BASIC INFORMATION

1. Why did I get this notice?

BGIS' records show that you worked for BGIS in California at some point between August 17, 2016 and November 12, 2021.

The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the final hearing. You have legal rights and options that you may exercise as part of this settlement. Judge Sunil R. Kulkarni of the Superior Court of the State of California, County of Santa Clara, is overseeing this lawsuit.

2. What is this lawsuit about?

In this Lawsuit, Plaintiffs Javier Diaz and George Mendez ("Plaintiffs") claim that BGIS: (1) failed to pay minimum wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize or permit rest periods; (5) failed to pay wages upon separation of employment and within the required time; (6) failed to furnish accurate itemized wage statements; (7) failed to reimburse necessary business expenses; (8) failed to pay vacation wages; and (9) Plaintiffs argued that these claimed violations were unfair and unlawful business practices under California's Unfair Competition Laws, and that they entitled Plaintiffs to recover civil penalties to be split 75% to the State of California and 25% to certain employees. Plaintiffs also claimed entitlement to restitution, interest, attorneys' fees, and costs. You can read Plaintiffs' allegations as stated in the First Amended Complaint, which is available at [settlement administrator website].

Throughout the litigation, BGIS has denied—and continues to deny—the factual and legal allegations in the case. BGIS does not believe that it violated any law or regulation relating to how it paid employees, when it paid employees, how much it paid employees, or how wage statements displayed information. BGIS denies any wrongdoing and asserts that its conduct at all times complied with the law. BGIS further denies that it owes the monies claimed in the Lawsuit. However, BGIS has voluntarily agreed to the terms of a negotiated settlement in order to avoid the burden and expense of continued litigation.

3. What is a class action and who is involved?

In a class action lawsuit such as this, a person called the "Class Representative" sues on behalf of other people who may have similar claims. The people together are a "Class" or "Class Members." The person who is the Class Representative is also called the plaintiff. The companies sued are called the defendant. In class action litigation, one Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

This class action also includes a “Private Attorney General” (PAGA) claim where the Plaintiffs are attempting to recover penalties for the State of California. In a PAGA action, the State receives 75% of the civil penalties, while employees receive 25%. This settlement will resolve all claims by the State for civil penalties arising from claims made by Plaintiffs or their counsel in the Lawsuit during the period of August 17, 2016 to November 12, 2021, and employees covered by the Lawsuit will be barred from bringing another lawsuit on behalf of the State for such penalties.

4. Why is this Lawsuit a class action?

For settlement purposes only, Plaintiffs and BGIS agreed that this case can proceed as a class action and to ask the Court to approve the settlement for the Class. The Court has not ruled on the merits of the case, and the decision to certify Class for settlement purposes should not be viewed as a prediction or agreement that Plaintiffs or the Class would ultimately prevail on the merits of the action.

5. What are the terms of the proposed Settlement?

Subject to final Court approval, the major terms of the Settlement are as follows:

1. BGIS has agreed to pay \$1,275,000.00 to settle the claims made in this lawsuit. This amount is also known as the “Maximum Settlement Amount”.
2. Plaintiffs have agreed to release all of their claims in this lawsuit against BGIS.
3. **Class Settlement Payments:** Plaintiffs seek the following deductions from the \$1,275,000.00 Maximum Settlement Amount:
 - a. Up to one-third (1/3) of the Maximum Settlement Amount (currently equal to \$425,000.00) for Class Counsel’s attorneys’ fees.
 - b. Up to \$20,000.00 for reimbursement of Class Counsel’s litigation costs.
 - c. An incentive award of up to \$10,000.00 (\$20,000 total for both Named Plaintiffs) to Plaintiffs for filing the Lawsuit, performing work in connection with the Lawsuit, and undertaking the risks of filing the Lawsuit.
 - d. Up to \$4,500.00 to cover the costs of the Settlement Administrator.
 - e. Payment of \$37,500.00 to the California Labor and Workforce Development Agency for release of PAGA claims.

If the Court approves the requested deductions, there will be approximately \$768,000.00 remaining, before deducting for taxes, to be distributed to Settlement Class Members. The remaining funds will be referred to as the “Net Settlement Amount.” Any amounts not requested or awarded by the Court will be included in the Net Settlement Amount. The Net Settlement Amount will be distributed to Class Members who do not request exclusion (the “Settlement Class Members”) on a pro rata basis according to the number of weeks they worked during the Class Period. However, for purposes of calculating each Settlement Class Member’s individual settlement payment, a Settlement Class Member who is also a

member of the AWS Subclass shall have their work weeks weighted with a 2/3 weighted ratio factor, while a Settlement Class Member is who is not a member of the AWS Subclass shall have their work weeks weighted with a 1/3 weighted ratio factor. In other words, individual settlement payments for Settlement Class Members who are also members of the AWS Subclass will be higher than the individual settlement payments for Settlement Class Members who are not members of the AWS Subclass because Plaintiff alleged the AWS Subclass had greater potential damages.

PAGA Settlement Payments. A portion of the Maximum Settlement Amount in the amount of \$12,500 will be set aside for Class Members who worked for BGIS in California at some point between August 17, 2016 and November 12, 2021 (“PAGA Group”). If you are a member of the PAGA Group, you will receive a pro rata share of the PAGA Group Payment, regardless of whether you opt-out of the settlement. You will not be able to pursue any claim on behalf of the State for such penalties.

Settlement Payments Generally. If a settlement check remains uncashed after 180 days from issuance, the check will become void and a stop payment will be placed on the uncashed check and the amount will be held with the Controller of the State of California to be held under the Unclaimed Property Law.

Your estimated settlement payment is listed in Section 8 of this Notice. Applicable taxes will be withheld from your payment.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The “Class” includes: All current and former non-exempt employees who are or were employed by BGIS in California at any time at any time between April 17, 2016, through November 12, 2021 (the “Class Period”).

The “AWS Subclass” includes: All current and former non-exempt employees who are or were employed by BGIS in California at any time during the Class Period and worked a 4 days, 10-hours or a 3 days, 12-hours alternative workweek schedule, except for those non-exempt employees who worked a 3 days, 12-hours alternative workweek schedule and who were paid daily overtime for all hours over eight (8) in a day.

7. I’m still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting Phoenix Settlement Administrators, the “Settlement Administrator”, at the designated phone number for this matter at (800) 779-2104 or by calling or writing the lawyers representing the Class in this case (“Class Counsel”), at the phone number or address listed in Section 19.

8. What is my approximate Individual Settlement Payment?

According to payroll records maintained by BGIS, the total number of weeks you worked in California for BGIS during the Class Period is . You [are/are not] a member of the AWS Subclass.

Based on information provided above and anticipated court-approved deductions, your share of the settlement is estimated to be \$ [REDACTED], less applicable taxes and withholdings.

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 16, below, of any changes to your mailing address for timely payment.

Disputing Your Payment Amount

If you believe your total weeks worked during the Class Period shown above are not correct, you may send a letter to the Settlement Administrator indicating what you believe is correct by no later than [DATE]. You should also send any documents or other information that supports your belief. The Settlement Administrator will attempt to resolve any dispute based on BGIS' records and any information you provide. Any disputes not resolved by the Settlement Administrator will be resolved by the Court.

9. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement and you do not opt out of the Settlement, you will be deemed to have released BGIS, its predecessors, successors, parents, subsidiaries, affiliates and/or related entities and each of their respective directors, members, officers, committee members, supervisors, employees, representatives and agents. ("Releasees") from any and all claims alleged or which could have been in alleged based on facts pleaded in Named Plaintiffs' operative complaints, including but not limited to the: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize or permit rest periods; (5) failure to pay wages upon separation of employment and within the required time; (6) failure to furnish accurate itemized wage statements wage statement violations; (7) failure to reimburse necessary business expenses; (8) failure to pay vacation wages in violation of Cal. Lab. Code 227.3; and (9) violation of California Business and Professions Code §§17200, *et seq.*, based on the preceding claims, including claims for violation of California Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 511, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2800, and 2802, from August 16, 2016 through November 12, 2021 "Settlement Class Released Claims". All Settlement Class Members shall be bound by the Settlement Class Released Claims, unless they formally opt out.

Additionally, if you worked during the period of August 17, 2016 through November 12, 2021, you are a PAGA Group Member and you will also release the right to bring a claim for civil penalties on behalf of the State (and other employees) based on the same facts or theories as the Settlement Class Released Claims, which arose during the PAGA Period, even if you have formally opted-out of being a Settlement Class Member, including claims for violation of California Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 511, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2800, and 2802.

10. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, must not opt out). In order to object, you may mail a written objection to the Settlement Administrator at the address in Section 16 below. To be valid, your objection must: (1) state your full name, address, and telephone number and the last four digits of your Social Security

Number; (2) state the grounds for the objection; (3) be signed by you; and (4) indicate whether you intend to appear at the Final Approval Hearing. You can also hire an attorney at your own expense to represent you in your objection. Your written objection to the Settlement Administrator must be postmarked on or before [DATE]. You may appear in person at the Final Fairness and Approval Hearing to present any oral objections even if you do not submit a timely written objection.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Class (and the class settlement). If you exclude yourself from the Class—sometimes called "opting-out" of the Class – you won't get any money or benefits from the class settlement. However, you may then be able to sue or continue to sue BGIS for your own claims if permitted by law. If you exclude yourself, you will not be legally bound by the Court's ruling in this Lawsuit, except for the release by PAGA Group Members, as explained above. Whether or not you submit a Request for Exclusion, you will still receive a small PAGA Group Payment if you are determined to be a part of the PAGA Group.

12. How do I ask to be excluded from the Class?

If you are a Class Member and would like to exclude yourself from the Class ("opt-out"), you, or your authorized representative, need to submit a written statement requesting exclusion from the Class to the Settlement Administrator at the address in Section 16 below. The statement must be signed by you or your authorized representative and must be postmarked on or before [DATE]. To be valid, your request for exclusion must: (1) state your full name, address, and telephone number and the last four digits of your Social Security Number; (2) contain a clear statement that you are requesting to opt out of, or be excluded from, the Settlement in *Diaz v. BGIS Global Integrated Solutions US LLC*; and (3) be signed by you.

Any Class Member who requests to be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal, or comment on the Settlement. Class Members who fail to submit a valid and timely request for exclusion will be bound by all terms of the Settlement and any ruling from the Court to give final approval of the Settlement. But Class Members cannot opt out of releasing PAGA claims, as those claims belong to the State of California and Plaintiffs have agreed to release those claims by acting as a proxy for the State.

THE LAWYERS REPRESENTING YOU

13. Who are the attorneys representing the Parties?

Lawyers for the Class

Samuel A. Wong (swong@aegislawfirm.com)
Kashif Haque (khaque@aegislawfirm.com)
Jessica L. Campbell (jcampbell@aegislawfirm.com)
Fawn F. Bekam (fbekam@aegislawfirm.com)
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, CA 92618
Tel: 949-379-6250

BGIS' Lawyers

David L. Cheng (dcheng@fordharrison.com)
Paul M. Suh (psuh@fordharrison.com)
FORD & HARRISON LLP
350 South Grand Avenue, Suite 2300
Los Angeles, CA 90071
Tel: 213-237-2400

The Court has preliminarily decided that Aegis Law Firm, PC is qualified to represent you and all Class Members. The law firm's attorneys are experienced in handling similar cases against other employers. More information about this law firm, their practice, and their lawyers' experience is available at www.aegislawfirm.com.

14. How will the lawyers be paid?

As part of the Settlement with BGIS, Class Counsel has requested one-third of the Maximum Settlement Amount (currently equal to \$425,000.00) in attorneys' fees, plus costs not to exceed \$20,000, to be paid from the Maximum Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel's fees and costs from your Individual Settlement Payment.

15. How will Plaintiffs be paid?

As part of the Settlement with BGIS, Class Counsel has requested an enhancement payment of up to \$10,000.00 each (\$20,000 total for both Named Plaintiffs) to be paid to Plaintiffs for their efforts in this matter during initial investigation, discovery, mediation and the like, while serving as Class Representatives and taking on the burden and risks of litigation.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

16. Who is handling the Settlement Administration process?

Phoenix Settlement Administrators
[Address & Phone Number]

17. When is the Final Fairness and Approval Hearing and do I have to attend?

The Final Fairness and Approval Hearing has been set for [DATE], at [TIME] in Department 1 of the Santa Clara County Superior Court for the State of California, located at 191 N. First Street, San Jose, CA 92113. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. Please note that the hearing may be continued without further notice to the Class. Make sure you check the Court's website before attempting to come to Court in person. You may be required to appear only by phone or video, depending on the current safety requirements due to the pandemic.

18. When will I get money after the hearing?

The Court will hold a hearing on [DATE], to decide whether to approve the settlement. If the Court approves the settlement, then there may be appeals if anyone objects. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. If the Court approves the settlement and if you do not opt out, your individual payment set forth in Section 8 above is expected to be distributed after BGIS makes payment to the Settlement Administrator. If there are no objections or appeals, BGIS will transfer the settlement funds within 30 calendar days of approval, and the Administrator will then distribute the funds. If there are objections or appeals, the payment can be delayed by at least 60 days, or even over a year. To check on the progress of the settlement, contact the Settlement Administrator or Class Counsel at the phone number or address listed in Section 19.

GETTING MORE INFORMATION

19. Are more details available?

For more information, the pleadings and other records in this litigation, including copies of the Settlement Agreement, may be examined at any time during regular business hours at the office of the Clerk of the Superior Court of the State of California for Santa Clara County, at the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 92113. You can also view the case records online at the court's website: <https://portal.scsccourt.org/search>. Insert the Case Number 21CV383425 under "Case Number Search." Then click "search" to view the case record.

Any questions regarding this Class Notice or the Lawsuit may be directed to the Claims Administrator at the below address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact the Lawyers for the Class at the address, telephone number or email address set forth above. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

Settlement Administrator:

Phoenix Settlement Administrators

[Address and Phone Number]

PLEASE DO NOT CALL OR WRITE TO THE COURT, OR TO ANY OF DEFENDANT'S MANAGERS, SUPERVISORS, OR DEFENDANT'S ATTORNEYS WITH QUESTIONS. ABOUT THIS NOTICE

EXHIBIT B

AEGIS LAW FIRM, PC

KASHIF HAQUE, State Bar No. 218672
SAMUEL A. WONG, State Bar No. 217104
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Attorneys for Plaintiff Javier Diaz and George Mendez,
individually, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JAVIER DIAZ and GEORGE MENDEZ,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

BGIS GLOBAL INTEGRATED
SOLUTIONS US, LLC; and DOES 1
through 20, inclusive,

Defendants.

Case No. 21CV383425

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Failure to Reimburse Necessary Business Expenses; and
8. Violation of Business and Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code §§ 2698, *et seq.* (“PAGA”)

DEMAND FOR JURY TRIAL

1 Plaintiffs Javier Diaz and George Mendez, individually, and on behalf of others
2 similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Javier Diaz and George Mendez (“Plaintiffs”) bring this putative class
5 and representative action against defendants BGIS Global Integrated Solutions US, LLC, and
6 DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of themselves
7 individually, other aggrieved employees, and a putative class of California citizens who are and
8 were employed by Defendants as non-exempt employees throughout California.

9 2. Defendants are in the business of operating and providing a global Data Center
10 and IT Infrastructure Management software.

11 3. Through this action, Plaintiffs allege that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
14 unfair competition.

15 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) Failing to pay overtime wages at the proper rates;
- 18 (b) Failing to pay all wages (including minimum wages and overtime
19 wages);
- 20 (c) Failing to provide lawful meal periods or compensation in lieu thereof;
- 21 (d) Failing to authorize or permit lawful rest breaks or provide compensation
22 in lieu thereof;
- 23 (e) Failing to provide accurate itemized wage statements;
- 24 (f) Failing to pay all wages due upon separation of employment; and
- 25 (g) Failing to reimburse all business expenses incurred by the employee in
26 direct consequence of the discharge of his or her duties.

27 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and
28 all others similarly situated in California to recover, among other things, unpaid wages and

benefits, interest, attorneys' fees, costs and expenses, and penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 511, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, 2802, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiffs are citizens of California. Plaintiffs were employed by Defendants during the Class Period in California.

11. Plaintiffs are informed and believe, and thereon allege that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiffs are unaware of the true names or capacities of the defendants sued

1 herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to
2 amend this Complaint and serve such fictitiously named defendants once their names and
3 capacities become known.

4 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
5 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
6 at all relevant times.

7 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
8 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
9 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
10 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
11 the employer and/or joint employer of Plaintiffs and the class members.

12 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
13 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
14 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
15 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
16 the official policy of Defendants.

17 16. At all relevant times, Defendants, and each of them, acted within the scope of
18 such agency or employment, or ratified each and every act or omission complained of herein.
19 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
20 each and all the other Defendants in proximately causing the damages herein alleged.

21 17. Plaintiffs are informed and believe, and thereon allege, that each of said
22 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
23 omissions, occurrences, and transactions alleged herein.

24 **CLASS ACTION ALLEGATIONS**

25 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
26 himself and all others similarly situated who were affected by Defendants' Labor Code,
27 Business and Professions Code §§ 17200, *et. seq.*, and IWC Wage Order violations.

28 19. All claims alleged herein arise under California law for which Plaintiffs seek

1 relief authorized by California law.

2 20. Plaintiffs' proposed class consists of and is defined as follows:

3 Class

4 All California citizens currently or formerly employed by Defendants as non-
5 exempt employees in the State of California at any time between August 17,
6 2016¹ and the date of class certification ("Class").

7 21. Plaintiffs also seek to certify the following subclasses of employees:

8 Waiting Time Subclass

9 All Class Members who separated their employment with Defendants at any time
10 between August 17, 2017 and the date of class certification ("Waiting Time
11 Subclass").

12 AWS Subclass

13 All Class Members who worked an alternative workweek schedule, except for
14 those who were paid daily overtime for all hours over eight (8) in a day ("AWS
15 Subclass").

16 22. Plaintiffs reserve the right to establish other or additional subclasses, or modify
17 or re-define the Class, or any class or subclass definition as appropriate based on investigation,
18 discovery, and specific theories of liability.

19 23. Members of the Class and the Subclasses described above will be collectively
20 referred to as "Class Members."

21 24. There are common questions of law and fact as to the Class Members that
22 predominate over any questions affecting only individual members including, but not limited to,
23 the following:

- 24 (a) Whether Defendants paid Plaintiffs and Class Members overtime
25 compensation at the proper rates;

26 _____
27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- (b) Whether Defendants failed to implement a valid alternative workweek schedule and thus failed to pay Plaintiffs and Class Members proper overtime compensation or failed to pay properly under a valid alternative workweek schedule;
- (c) Whether Defendants paid Plaintiffs and Class Members all wages (including minimum and overtime wages) for all hours worked by Plaintiff and Class Members;
- (d) Whether Defendants required Plaintiffs and Class Members to work over 8 hours per day, over twelve (12) hours per day, and/or over forty (40) hours per week and failed to pay them overtime compensation at the proper rate;
- (e) Whether Defendants deprived Plaintiffs and Class Members of timely meal periods or required Plaintiffs and Class Members to work through meal periods without compensation;
- (f) Whether Defendants deprived Plaintiffs and Class Members of rest breaks or required Plaintiffs and Class Members to work through rest breaks without compensation;
- (g) Whether Defendants failed to provide Plaintiffs and Class Members accurate itemized wage statements;
- (h) Whether Defendants failed to timely pay Plaintiffs and the Subclass all wages due upon termination or within seventy-two (72) hours of resignation;
- (i) Whether Defendants required Plaintiffs and class members to incur expenses for work and then failed to adequately reimburse Plaintiffs and Class Members for such expenses;
- (j) Whether Defendants failed to pay Plaintiffs and class members' vacation pay at the regular rate of pay;
- (k) Whether Defendants' conduct was willful or reckless; and

1 (l) Whether Defendants engaged in unfair business practices in violation of
2 Business and Professions Code §§ 17200, *et seq.*

3 25. There is a well-defined community of interest in this litigation and the proposed
4 Class and Subclass are readily ascertainable:

5 (a) Numerosity: The Class Members are so numerous that joinder of all
6 members is impractical. Although the members of the entire Class and Subclasses are unknown
7 to Plaintiffs at this time, on information and belief, the class is estimated to be greater than one
8 100 individuals. The identities of the Class Members are readily ascertainable by inspection of
9 Defendants' employment and payroll records.

10 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
11 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
12 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
13 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
14 sustained by the Class Members, because they arise out of and are caused by Defendants'
15 common course of conduct as alleged herein.

16 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
17 interests of all Class Members because it is in their best interest to prosecute the claims alleged
18 herein to obtain full compensation and penalties due to them and the Class Members. Plaintiffs'
19 attorneys, as proposed class counsel, are competent and experienced in litigating large
20 employment class actions and versed in the rules governing class action discovery,
21 certification, and settlement. Plaintiffs have incurred and, throughout the duration of this action,
22 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
23 for the prosecution of this action for the substantial benefit of the Class Members.

24 (d) Superiority: The nature of this action makes use of class action
25 adjudication superior to other methods. A class action will achieve economies of time, effort,
26 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
27 the same issues can be adjudicated in the same manner for the entire Class and Subclasses at
28 the same time. If appropriate, this Court can, and is empowered to, fashion methods to

1 efficiently manage this case as a class action.

2 (e) Public Policy Considerations: Employers in the State of California
3 violate employment and labor laws every day. Current employees are often afraid to assert their
4 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
5 actions because they believe their former employers might damage their future endeavors
6 through negative references and/or other means. Class actions provide class members who are
7 not named in the complaint with a type of anonymity that allows for the vindication of their
8 rights while affording them privacy protections.

9 **GENERAL ALLEGATIONS**

10 26. At all relevant times mentioned herein, Defendants employed Plaintiffs and
11 other California residents as non-exempt employees at Defendants' California business
12 location(s).

13 27. Defendants continue to employ non-exempt employees within California.

14 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein
15 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
16 who were knowledgeable about California's wage and hour laws, employment and personnel
17 practices, and the requirements of California law.

18 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and Class Members were entitled to receive wages for all
20 time worked (including minimum and overtime wages) and that they were not receiving all
21 wages earned for work that was required to be performed due to rounding practices, on-call
22 time paid at less than minimum wage, and other practices. In violation of the Labor Code and
23 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum
24 and overtime wages) for all hours worked at the proper rates of pay.

25 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and Class Members were entitled to receive overtime wages
27 and that they were not receiving all wages earned for work under Defendants' Alternative
28 Workweek Schedule. Plaintiffs believe Defendant either failed to implement a proper

1 alternative workweek or failed to properly pay overtime under a valid Alternative Workweek
2 Schedule and thus owe Plaintiffs and Class Members unpaid overtime.

3 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and Class Members were entitled to receive all required meal
5 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
6 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
7 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
8 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
9 rate of pay when they did not receive a timely, uninterrupted meal period.

10 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
12 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay
13 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs
14 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
15 at Plaintiffs' and Class Members' regular rate of pay when a rest break was missed.

16 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and class members were entitled to reimbursement for
18 necessary expenditures incurred in connection with the performance and execution of their job
19 duties. In violation of the California Labor Code, Plaintiffs and class members did not receive
20 adequate reimbursement for necessary business expenses, including, but not limited to,
21 reimbursement for cell phone and home internet use.

22 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that the Class Members were entitled to receive itemized wage statements
24 that accurately showed the gross and net wages earned, total hours worked, all applicable
25 hourly rates in effect, and the number of hours worked at each hourly rate in accordance with
26 California law. In violation of the Labor Code, the Class Members were not provided with
27 accurate itemized wage statements.

28 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that the Waiting Time Subclass members were entitled to timely payment
2 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
3 Time Subclass did not receive payment of all wages within permissible time periods, including
4 but not limited to vacation pay at the regular rate.

5 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known they had a duty to compensate Plaintiffs and Class Members, and
7 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
8 intentionally failed to do so in order to increase Defendants' profits.

9 37. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
10 against Defendants on behalf of himself and all Class Members to recover, among other things,
11 unpaid wages (including minimum and overtime wages), meal period premium payments, rest
12 period premium payments, interest, attorneys' fees, penalties, costs, and expenses.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order §§3-4)

16 38. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
17 though fully set forth herein.

18 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
19 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
20 wage than the minimum so fixed is unlawful.

21 40. During the relevant time period, Defendants paid Plaintiffs and Class Members
22 less than the minimum wage when they failed to pay proper compensation for all hours worked.
23 To the extent these hours do not qualify for the payment of overtime, Plaintiffs and Class
24 Members were not being paid at least the minimum wage for their work.

25 41. During the relevant time period, Defendants regularly failed to pay at least the
26 minimum wage to Plaintiffs and Class Members for all hours worked pursuant to Labor Code
27 §§ 1194 and 1197, as alleged herein.

28 42. Defendants' failure to pay Plaintiffs and Class Members the required minimum

1 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and Class
2 Members are entitled to recover the unpaid balance of their minimum wage compensation as
3 well as interest, costs, and attorneys' fees.

4 43. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to
5 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
6 interest thereon.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY OVERTIME WAGES**

9 (Violation of Labor Code §§ 510, 511, 1194, and 1198; Violation of IWC Wage Order § 3)

10 44. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
11 though fully set forth herein.

12 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
13 unlawful to employ persons without compensating them at a rate of pay either one and one-half
14 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
15 worked by the person on a daily or weekly basis.

16 46. Specifically, the applicable IWC Wage Orders provide that Defendants are and
17 were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one
18 and one-half times (1½) their regular rate of pay when working and for all hours worked in
19 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
20 eight (8) hours of work on the seventh day of work in a workweek.

21 47. The applicable IWC Wage Orders further provide that Defendants are and were
22 required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times
23 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
24 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

25 48. California Labor Code § 510 codifies the right to overtime compensation at one
26 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
27 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
28 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours

1 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
2 seventh day of work in a workweek.

3 49. Labor Code § 510 and the applicable IWC Wage Orders provide that
4 employment of more than six days in a workweek is only permissible if the employer pays
5 proper overtime compensation as set forth herein.

6 50. Plaintiffs and Class Members were non-exempt employees entitled to the
7 protections of California Labor Code §§ 510 and 1194.

8 51. During the relevant time period, Defendants failed to pay Plaintiffs and Class
9 Members overtime wages for all overtime hours worked when Plaintiffs and Class Members
10 worked in excess of eight (8) hours in a day and/or forty (40) hours in a week or for a seventh
11 day of work in a workweek, or when Plaintiffs and Class Members worked in excess of twelve
12 (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work
13 week. To the extent these hours qualify for the payment of overtime, Plaintiffs and Class
14 Members worked shifts of eight (8) hours or more without being paid proper overtime wages.

15 52. During the relevant time period, Defendants failed to pay Plaintiffs and Class
16 Members all wages owed when Defendants failed to properly implement an alternative
17 workweek election or failed to properly pay overtime wages under a valid alternative
18 workweek election.

19 53. In violation of state law, Defendants knowingly and willfully refused to perform
20 their obligations and compensate Plaintiffs and Class Members for all wages earned and all
21 hours worked, as alleged herein.

22 54. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
23 overtime and double time compensation, as required by California law, violates the provisions
24 of Labor Code §§ 510 and 1198, and is therefore unlawful.

25 55. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
26 recover their unpaid overtime and double time compensation as well as interest, costs, and
27 attorneys' fees.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

4 56. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein

6 57. Labor Code § 226.7 provides that no employer shall require an employee to work
7 during any meal period mandated by the IWC Wage Orders.

8 58. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall
9 employ any person for a work period of more than five (5) hours without a meal period of not
10 less than 30 minutes, except that when a work period of not more than six (6) hours will
11 complete the day’s work the meal period may be waived by mutual consent of the employer and
12 the employee.”

13 59. Labor Code § 512(a) provides that an employer may not require, cause, or permit
14 an employee to work for a period of more than five (5) hours per day without providing the
15 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
16 the total work period per day of the employee is not more than six (6) hours, the meal period
17 may be waived by mutual consent of both the employer and the employee.

18 60. Labor Code § 512(a) also provides that an employer may not employ an
19 employee for a work period of more than ten (10) hours per day without providing the employee
20 with a second meal period of not less than thirty (30) minutes, except that if the total hours
21 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
22 consent of the employer and the employee only if the first meal period was not waived.

23 61. During the relevant time period, Plaintiffs and Class Members did not receive
24 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
25 their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

26 62. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
27 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
28 compensation for each work day that a compliant meal period is not provided.

63. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order.

64. As a result of Defendants' failure to pay Plaintiffs and Class Members an additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and Class Members suffered and continue to suffer a loss of wages and compensation.

FOURTH CAUSE OF ACTION

FAILURE TO PERMIT REST BREAKS

(Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

65. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

66. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

67. Section 12 of the applicable IWC Wage Order states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

68. During the relevant time period, Plaintiffs and Class Members did not receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked because they were required to work through their daily rest periods and/or were not authorized to take their rest periods.

69. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period is not provided.

70. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §

226.7(b) and section 12 of the applicable IWC Wage Order.

71. As a result of Defendants' failure to pay Plaintiffs and Class Members an additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class Members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226)

72. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

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

74. During the relevant time period, Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a) on wage statements that were provided to the Class Members. The deficiencies include, among other things, the failure to correctly state the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the number of hours worked at each hourly rate by the Class Members.

75. As a result of Defendants' knowing and intentional failure to comply with Labor Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code

1 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
2 Members were denied both their legal right to receive, and their protected interest in receiving,
3 accurate itemized wage statements under Labor Code § 226(a). Plaintiffs have had to file this
4 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to incur
5 expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur these
6 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
7 has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
8 Defendants.

9 76. The Class Members are entitled to recover from Defendants the greater of all
10 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
11 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
12 (\$100.00) per employee for each violation in subsequent pay periods in an amount not
13 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

14 77. Defendants' violations of California Labor Code § 226(a) prevented the Class
15 Members from knowing, understanding, and disputing the wages paid to them and resulted in
16 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
17 intentional failure to comply with California Labor Code § 226(a), the Class Members have
18 suffered an injury, in the exact amount of damages and/or penalties to be shown according to
19 proof at trial.

20 78. The Class Members are also entitled to injunctive relief under California Labor
21 Code § 226(h), compelling Defendants to comply with California Labor Code § 226.
22 Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in
23 obtaining this injunctive relief.

24 SIXTH CAUSE OF ACTION

25 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

26 (Violation of Labor Code §§ 201, 202, 203, 227.3)

27 79. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
28 though fully set forth herein.

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

7 81. Labor Code § 227.3 provides all accrued vacation pay is due upon termination
8 of employment.

9 82. During the relevant time period, Defendants willfully failed to pay the Waiting
10 Time Subclass all their earned wages upon termination, including, but not limited to, proper
11 minimum wage and overtime compensation, vacation pay at the regular rate, meal period
12 premiums, and rest period premiums either at the time of discharge or within seventy-two (72)
13 hours of their leaving Defendants' employ.

14 83. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
15 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
16 in violation of Labor Code §§ 201 and 202.

17 84. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
18 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
19 then the wages of the employee shall continue as a penalty from the due date at the same rate
20 until paid or until an action is commenced; but the wages shall not continue for more than thirty
21 (30) days.

22 85. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
23 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass
24 members' regular daily wages at their regular hourly rate of pay for each day they were not
25 paid, up to a maximum of thirty (30) days.

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1 94. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
2 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice
3 ...”

4 95. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
5 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
6 and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to
7 suffer injuries-in-fact.

8 96. Defendants’ policies and practices violated state law in at least the following
9 respects:

- 10 (a) Failing to pay all wages earned (including minimum wage and overtime
11 wages) to Plaintiffs and Class Members in violation of Labor Code §§
12 227.3, 510, 511, 1182.12, 1194, 1194.2, 1197, and 1198;
- 13 (b) Failing to provide compliant meal periods without paying Plaintiffs and
14 Class Members premium wages for every day said meal periods were not
15 provided in violation of Labor Code §§ 226.7 and 512;
- 16 (c) Failing to authorize or permit compliant rest breaks without paying
17 Plaintiffs and Class Members premium wages for every day said rest
18 breaks were not authorized or permitted in violation of Labor Code §
19 226.7;
- 20 (d) Failing to provide the Class Members with accurate itemized wage
21 statements in violation of Labor Code § 226;
- 22 (e) Failing to timely pay all earned wages to the members of the Waiting
23 Time Subclass upon separation of employment in violation of Labor
24 Code §§ 201, 202, 203, and 227.3; and
- 25 (f) Failing to reimburse business expenses in violation of Labor Code §§
26 2800 and 2802.

27 97. As alleged herein, Defendants systematically engaged in unlawful conduct in
28 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages

1 (minimum and overtime wages), failing to provide meal periods and rest periods or
2 compensation in lieu thereof, failing to furnish accurate wage statements, failing to pay all
3 wages due and owing upon separation of employment in a timely manner, and failing to
4 reimburse business expenses, all in order to decrease their costs of doing business and increase
5 their profits.

6 98. At all relevant times herein, Defendants held themselves out to Plaintiffs and
7 Class Members as being knowledgeable concerning the labor and employment laws of
8 California.

9 99. At the time Plaintiffs and Class Members were hired, Defendants knowingly,
10 intentionally, and wrongfully misrepresented to each of them their conformance with the
11 California Labor Code and IWC Wage Orders, including proper payments required by law.

12 100. At all times relevant herein, Plaintiffs and Class Members relied on and believed
13 Defendants' representations concerning their conformance with California's wage and hour
14 laws all to their detriment.

15 101. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
16 and Class Members wages and monies, thereby creating for Defendants an artificially lower
17 cost of doing business in order to undercut their competitors and establish and/or gain a greater
18 foothold in the marketplace.

19 102. As a result of Defendants' intentional, willful, purposeful, and wrongful
20 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
21 Plaintiffs and Class Members suffered a loss of wages and monies, all in an amount to be
22 shown according to proof at trial.

23 103. By violating the foregoing statutes and regulations as herein alleged,
24 Defendants' acts constitute unfair and unlawful business practices under California Business
25 and Professions Code §§ 17200, *et seq.*

26 104. As a result of the unfair and unlawful business practices of Defendants, as
27 alleged herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and
28 restitution in an amount to be shown according to proof at trial.

105. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698, ET SEQ. (“PAGA”)

106. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as though fully set forth herein.

107. Pursuant to Labor Code §2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

108. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

109. Defendants' conduct violates numerous Wage Order and Labor Code sections, including, but not limited to, the following:

a. violation of Labor Code §§ 201-203, 204, 210, 510, 511, 558 1182.12, 1194, 1194.2, 1197, and 1198 for failure to timely pay all earned wages (including minimum wage and overtime wages) owed to Plaintiffs and other aggrieved employees during employment and upon separation of employment as herein alleged;

- b. violation
- c. violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- d. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- e. violation of Labor Code § 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiffs and other aggrieved employees as herein alleged;
- f. violation of Labor Code §§ 2800 and 2802 for failure to reimburse necessary business expenses;
- g. violation of Labor Code § 227.3 for failure to pay Plaintiffs and aggrieved employees all wages owed for vacation pay at their regular rate of pay during and upon termination of employment; and
- h. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

110. Plaintiffs are “aggrieved employees” because they were employed by the alleged violator and had one or more of the violations committed against them, and therefore are properly suited to represent the interests of all other aggrieved employees.

111. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA.

112. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

113. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;

2. For appointment of Javier Diaz and George Mendez as the class representatives;

3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

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

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

12. For PAGA penalties;

13. For pre-judgment interest;

14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e), 1194, 2698, *et seq.*, 2802(c); and

1 15. For such other relief as the Court deems just and proper.

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3 Dated: September 30, 2021

AEGIS LAW FIRM, PC

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By: 
Fawn F. Bekam
Attorneys for Plaintiffs Javier Diaz and George
Mendez

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DEMAND FOR JURY TRIAL

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Plaintiffs hereby demand a jury trial with respect to all issues triable of right by jury.

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12 Dated: September 30, 2021

AEGIS LAW FIRM, PC

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By: 
Fawn F. Bekam
Attorneys for Plaintiffs Javier Diaz and George
Mendez

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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On September 30, 2021, I served the foregoing document entitled:

5 • **FIRST AMENDED CLASS ACTION COMPLAINT**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
copy thereof on the party(ies) addressed below as follows:

7 Paul M. Suh
8 David L. Cheng
9 FORDHARRISON LLP
350 South Grand Avenue, Suite 2300
Los Angeles, CA 90071
10 Telephone: 213.237.2400
Facsimile: 213.237.2401
11 PSuh@fordharrison.com
12 dcheng@fordharrison.com
13 Imarquez@fordharrison.com
14 MGarner@fordharrison.com
EReinold@fordharrison.com
ktaylor@fordharrison.com

15 *Attorneys for Defendant:*

16 BGIS GLOBAL INTEGRATED SOLUTIONS US, LLC

17 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
18 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
19 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
20 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

21 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
22 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
23 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

24 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

25 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
26 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

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

3 Executed on September 30, 2021, at Irvine, California.

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5 _____
6 Delaney Graves
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